


ARKANSAS CODE OF 1987 ANNOTATED

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 6D 2020 Replacement TITLE 9: FAMILY LAW (CHAPTERS 25-34)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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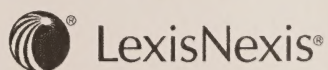
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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2019 Regular Session, the 2020 First Extraordinary Session, and the 2020 Fiscal Session. Annotations are to the following sources:

- Arkansas Supreme Court and Arkansas Court of Appeals Opinions
- Federal Supplement
- Federal Reporter
- United States Supreme Court Reports
- Bankruptcy Reporter
- Arkansas Law Notes
- Arkansas Law Review
- University of Arkansas at Little Rock Law Review
- American Law Reports (ALR)

Titles of the Arkansas Code

- | | |
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| 1. General Provisions | 16. Practice, Procedure, and Courts |
| 2. Agriculture | 17. Professions, Occupations, and Businesses |
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| 4. Business and Commercial Law | 19. Public Finance |
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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1A of the Code.

TITLE 9
FAMILY LAW
(CHAPTERS 1-24 IN VOLUME 6C)

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. CHANGE OF NAME.
3. DOMICILE.
4. ARKANSAS DOMESTIC PEACE ACT.
5. ARKANSAS CHILD SAFETY CENTER ACT.
6. ARKANSAS DOMESTIC VIOLENCE SHELTER ACT.
7. [RESERVED.]

SUBTITLE 2. DOMESTIC RELATIONS

CHAPTER.

8. GENERAL PROVISIONS.
9. ADOPTION.
10. PATERNITY.
11. MARRIAGE.
12. DIVORCE AND ANNULMENT.
13. CHILD CUSTODY AND VISITATION.
14. SPOUSAL AND CHILD SUPPORT.
15. DOMESTIC ABUSE ACT.
16. FAMILY PRESERVATION SERVICES PROGRAM ACT.
17. UNIFORM INTERSTATE FAMILY SUPPORT ACT.
18. QUALIFIED DOMESTIC RELATIONS ORDERS.
19. UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.
20. ADULT MALTREATMENT CUSTODY ACT.
21. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.
- 22-24. [RESERVED.]

APPENDIX.

CHILD SUPPORT GUIDELINES

SUBTITLE 3. MINORS

CHAPTER.

25. GENERAL PROVISIONS.
26. RIGHTS RESPECTING BUSINESS AND PROPERTY.
27. JUVENILE COURTS AND PROCEEDINGS.
28. PLACEMENT AND DETENTION PROGRAMS.
29. INTERSTATE COMPACTS.
30. CHILD ABUSE AND NEGLECT PREVENTION.
31. YOUTH SERVICES.
32. CHILD WELFARE.
33. YOUTH VIOLENCE.
34. VOLUNTARY PLACEMENT OF A CHILD.

Publisher's Notes. The term "notice" is defined for this title at § 9-14-201(8). The term "income" is defined for this title at § 9-14-201(4)(A). The terms "child sup-

port order" and "support order" are defined for this title and the rest of the Code at § 9-14-201(2).

SUBTITLE 3. MINORS

CHAPTER 25

GENERAL PROVISIONS

SECTION.

9-25-101. Age of majority — Exceptions.

9-25-102. Destruction of property.

9-25-103. [Repealed.]

9-25-104. Immediate notification of parents when child in custody.

SECTION.

9-25-105. Child Death and Near Fatality
Multidisciplinary Review
Committee — Membership
— Powers.

A.C.R.C. Notes. Acts 1995, No. 1203, formerly noted under this chapter, was amended by Acts 1997, No. 250, § 254, but repealed by Acts 1997, No. 745, § 9.

Acts 1997, No. 768, § 45, provided: "Youth violence prevention. A majority of moneys received from the funds provided herein for youth violence prevention programs shall be used for grants to local communities, with a minimal amount expended for administrative costs as approved by the Governor's Partnership Council for Children and Families. The Governor's Partnership Council shall also assure a portion of the moneys received from the funds provided herein are placed in a trust fund to be used for future grants."

Cross References. Consent of parents necessary to marriage, § 9-11-102.

Consent to treatment of sexually transmitted disease by minor, § 20-16-508.

Removing disabilities of minors, § 9-26-104.

Effective Dates. Acts 1873, No. 78, § 51: effective on passage.

Acts 1959, No. 45, § 2: Feb. 13, 1959. Emergency clause provided: "It is hereby found and declared by the General Assembly that a considerable amount of property is destroyed each year in this State by the intentional and malicious acts of children under eighteen (18) years of age; that there is presently no law in this State rendering the parents of such children liable in damages for property intentionally and maliciously destroyed by their children, and that this Act will provide a much needed remedy for such property owners against the parents of such children. Therefore an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2019, No. 580, § 18: Sept. 1, 2019. Effective date clause provided: "Sections 2-17 of this act are effective on the first day of the second calendar month following the effective date of this act."

RESEARCH REFERENCES

Am. Jur. 42 Am. Jur. 2d, Infants, § 1 et seq.

59 Am. Jur. 2d, Parent & C., § 88 et seq.
C.J.S. 43 C.J.S., Infants, § 1 et seq.

9-25-101. Age of majority — Exceptions.

(a) All persons of the age of eighteen (18) years shall be considered to have reached the age of majority and be of full age for all purposes. Until the age of eighteen (18) years is attained, they shall be considered minors.

(b)(1) Any law of the State of Arkansas that presently requires a person to be of a minimum age of twenty-one (21) years to enjoy any privilege or right or to do any act or to participate in any event, election, or other activity shall be deemed to require that person to be of a minimum age of eighteen (18) years.

(2) However, this section shall not repeal, amend, or otherwise affect any existing laws concerning or in any way relating to beer, wines, spirituous, vinous, malt liquors, or other alcoholic beverages, tobacco products, vapor products, alternative nicotine products, e-liquid products, or cigarette papers, and the sale thereof to persons under twenty-one (21) years of age.

History. Acts 1873, No. 78, § 1, p. 185; C. & M. Dig., § 4986; Pope's Dig., § 6215; Acts 1975, No. 892, § 1; A.S.A. 1947, § 57-103; Acts 2019, No. 580, § 5.

Amendments. The 2019 amendment

added the (b)(1) and (b)(2) designations; and inserted "tobacco products, vapor products, alternative nicotine products, e-liquid products, or cigarette papers" in (b)(2).

RESEARCH REFERENCES

Ark. L. Rev. Gitelman and McIvor, Domicile, Residence and Going to School in Arkansas, 37 Ark. L. Rev. 843 (1984).

U. Ark. Little Rock L.J. Note: Duty of Continued Child Support Past the Age of Majority, 1 U. Ark. Little Rock L.J. 397.

CASE NOTES

ANALYSIS

Agreements Prior to Amendment.
Consensual Sexual Relations.
Guardian Ad Litem.
Homestead Rights.
Support.

Note. — Many of the following cases were decided prior to the 1975 amendment to this section. Prior to that amendment, males reached the age of majority at 21 years of age while females reached the age of majority at 18 years of age.

Agreements Prior to Amendment.

Reduction of legal age of majority for males had no impact on a prior support agreement between divorced husband and wife. *Brown v. Smith*, 1 Ark. App. 141, 613 S.W.2d 598 (1981).

Consensual Sexual Relations.

Section 5-14-125(a)(6), as applied to a high school teacher who engaged in a consensual sexual relationship with an 18-year-old student, who was an adult under subsection (a) of this section, infringed on the teacher's fundamental right to privacy and was not the least restrictive method available for the promotion of the state's interest; therefore, it was unconstitutional. *Paschal v. State*, 2012 Ark. 127, 388 S.W.3d 429 (2012).

Guardian Ad Litem.

In suit to foreclose mortgage on homestead, appointment of guardian ad litem to represent mortgagor's children, who inherited an interest during minority but were of full age when suit was filed, was unnecessary. *Federal Land Bank v. Cottrell*, 197 Ark. 783, 126 S.W.2d 279 (1939).

Homestead Rights.

The homestead right of a female infant ceases at 21 under the Constitution, but when there are no younger children, the female child may relinquish or abandon the homestead when she reaches the age of 18. *Hargett v. Hill, Fontaine & Co.*, 101 Ark. 510, 142 S.W. 1137 (1912).

Support.

Where daughter was a normal person in every respect and there was no physical or mental handicap which would imply a continuing obligation of support by the parent, the father's legal obligation, absent a contract to the contrary, ceased when she became 18 years of age. *Worthington v. Worthington*, 207 Ark. 185, 179 S.W.2d 648 (1944).

Once a child reaches majority and is physically and mentally normal, the legal duty of the parents to support that child ceases; that duty cannot be reimposed later if the adult child becomes disabled

and needs support. *Towery v. Towery*, 285 Ark. 113, 685 S.W.2d 155 (1985).

Cited: *Brake v. Sides*, 95 Ark. 74, 128 S.W. 572 (1910); *Gamble v. Phillips*, 107 Ark. 561, 156 S.W. 177 (1913); *Shinley v. Ricks*, 234 Ark. 767, 354 S.W.2d 547 (1962); *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962); *Norwood v. Allen*, 240 Ark. 232, 398 S.W.2d 684 (1966); *Petty v. Petty*, 252 Ark. 1032, 482 S.W.2d 119 (1972); *Harris v. Pacific Floor Mach. Mfg. Co.*, 856 F.2d 64 (8th Cir. 1988); *Linder v. Howard*, 296 Ark. 414, 757 S.W.2d 549 (1988); *Thomas v. Swanson*, 881 F.2d 523 (8th Cir. 1989); *Phillips v. Sugrue*, 800 F. Supp. 789 (E.D. Ark. 1992); *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992); *Cowden v. Ramsay*, 154 B.R. 531 (Bankr. E.D. Ark. 1993); *Low v. Ins. Co. of N. Am.*, 364 Ark. 427, 220 S.W.3d 670 (2005); *Miller v. Ark. Office of Child Support Enforcement*, 2015 Ark. App. 188, 458 S.W.3d 733 (2015).

9-25-102. Destruction of property.

(a) The state or any county, city, town, or school district, or any person, corporation, or organization shall be entitled to recover damages in an amount not in excess of five thousand dollars (\$5,000) in a court of competent jurisdiction from the parents of any minor under eighteen (18) years of age, living with a parent or legal guardian, who shall maliciously or willfully destroy, damage, or deface real, personal, or mixed property belonging to the state or county, city, town, or school district, or any person, corporation, or organization.

(b) This section does not apply to:

(1) Any destruction of property caused by a minor under eighteen (18) years of age who is in the custody of the Department of Human Services; or

(2) A minor younger than thirteen (13) years of age who defaces property with graffiti.

History. Acts 1959, No. 45, § 1; 1975, No. 283, § 1; 1977, No. 201, § 1; A.S.A. 1947, § 50-109; Acts 1987, No. 36, § 1; 2011, No. 888, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Torts and the Family — Areas of Liability, 14 Ark. L. Rev. 92.

U. Ark. Little Rock L.J. Survey of Arkansas Law: Torts, 6 U. Ark. Little Rock L.J. 211.

Survey — Torts, 10 U. Ark. Little Rock L.J. 609.

CASE NOTES

ANALYSIS

Construction.
Intent.

Construction.

“Willfully” within the context of this section, which must be strictly construed because of its penal nature, means an intent to do the act in question. Farm

Bureau Mut. Ins. Co. v. Henley, 275 Ark. 122, 628 S.W.2d 301 (1982).

Intent.

Where evidence showed that children caused fire but did not actually intend to set fire to building, their parents were not held liable under this section. Farm Bureau Mut. Ins. Co. v. Henley, 275 Ark. 122, 628 S.W.2d 301 (1982).

9-25-103. [Repealed.]

Publisher’s Notes. This section, concerning mother’s assent to child’s apprenticeship, was repealed by Acts 2013, No. 1152, § 8. The section was derived from

Acts 1873, No. 126, § 7, p. 382; C. & M. Dig., § 5585; Pope’s Dig., § 7235; A.S.A. 1947, § 57-107.

9-25-104. Immediate notification of parents when child in custody.

(a) When the Department of Human Services has taken custody of a minor solely because of the actions of someone other than a custodial parent, the department shall immediately exercise all efforts to identify and locate the custodial parent or custodial parents of the minor.

(b) When a parent is identified and located, and if that parent is a custodial parent, the department shall immediately notify the parent as to the location of the minor and of the parent’s right to obtain possession of the minor at that location.

(c) The department shall not withhold custody or possession of any child from the child’s custodial parent or parents unless a petition for dependency-neglect is filed naming the custodial parent or parents as a party.

History. Acts 2001, No. 1245, § 1.

9-25-105. Child Death and Near Fatality Multidisciplinary Review Committee — Membership — Powers.

(a)(1) The safety of children is a paramount concern for the citizens of Arkansas.

(2)(A) There are children who die from abuse or neglect or who have previously come into contact with the Division of Children and Family Services whose deaths might have been prevented.

(B) The state has a responsibility to examine the deaths and near fatalities of children in order to identify strategies to prevent future deaths and near fatalities of children who are at similar risk of harm.

(3) The examination into deaths of children who have come into contact with the Division of Children and Family Services requires

multidisciplinary participation from the community and experts in child welfare.

(4) The examination of deaths and near fatalities in contact with the Division of Children and Family Services should include transparent and comprehensive review of the circumstances leading to the death or near fatality and the review process should lead to recommendations and actions to be implemented to prevent future child deaths and near fatalities.

(b) The Child Death and Near Fatality Multidisciplinary Review Committee is created to include the following members:

(1) The Director of the Division of Children and Family Services or his or her designee;

(2) One (1) member to represent the Division of Children and Family Services Worker Supervisor as designated by the Director of the Division of Children and Family Services;

(3) One (1) member to represent the Division of Children and Family Services Investigations Supervisor as designated by the Director of the Division of Children and Family Services;

(4) The Commander of the Crimes Against Children Division or his or her designee;

(5) The Executive Director of the Arkansas Child Abuse/Rape/Domestic Violence Commission or his or her designee;

(6) The Executive Director of the Children's Advocacy Centers of Arkansas or his or her designee;

(7) The Director of the Arkansas State Court Appointed Special Advocates for Children Association or his or her designee;

(8) The Director of the Team for Children at Risk and Rebecca and Robert Rice Medical Clinic of the Arkansas Children's Hospital or his or her designee;

(9) The Director of the Dependency-Neglect Attorney Ad Litem Program or his or her designee;

(10) The Director of the Office of Chief Counsel of the Department of Human Services or his or her designee;

(11) The Director of the Office of the Prosecutor Coordinator or his or her designee;

(12) One (1) member appointed by the Chair of the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs;

(13) One (1) member appointed by the Chief Justice of the Supreme Court;

(14) One (1) member appointed by the Governor; and

(15) One (1) member to be designated by the Arkansas Child Abuse/Rape/Domestic Violence Commission.

(c) The Child Death and Near Fatality Multidisciplinary Review Committee shall review all child deaths of children under eighteen (18) years of age who had contact with the Division of Children and Family Services within twenty-four (24) months before death as determined by comparing records of deaths from the Division of Vital Records with information in the Children's Reporting and Information System.

(d) The Child Death and Near Fatality Multidisciplinary Review Committee shall review all deaths and near fatalities of children that have been reported through the Child Abuse Hotline.

(e)(1) The Child Death and Near Fatality Multidisciplinary Review Committee shall meet no less than one (1) time each quarter of the calendar year.

(2) A majority of the members of the Child Death and Near Fatality Multidisciplinary Review Committee shall constitute a quorum for the transaction of business.

(3) A vacancy arising among the appointed membership of the Child Death and Near Fatality Multidisciplinary Review Committee for reasons other than expiration of the regular terms for which the member was appointed shall be filled by appointment by the person who appointed the vacating member.

(4) At the expiration of the term of the initial chair, the Child Death and Near Fatality Multidisciplinary Review Committee shall elect a chair who shall serve a one-year term.

(f) The meetings shall be closed and information discussed at the meeting shall be confidential.

(g) No other individual shall be allowed to attend or participate in a meeting unless a majority of the members vote to request the attendance of a noncommittee member.

(h) The Division of Children and Family Services and the Crimes Against Children Division of the Division of Arkansas State Police shall provide the list of all child deaths and near fatalities to be reviewed and all records related to the child in physical or electronic format to the members of the Child Death and Near Fatality Multidisciplinary Review Committee no less than fourteen (14) calendar days before a scheduled meeting.

(i) The Department of Human Services shall provide to the Child Death and Near Fatality Multidisciplinary Review Committee a summary of any internal child death or near fatality review with the actions and recommendations of the department.

(j) Materials and information provided to members of the Child Death and Near Fatality Multidisciplinary Review Committee shall not be disclosed except to the Child Death and Near Fatality Multidisciplinary Review Committee.

(k) The Child Death and Near Fatality Multidisciplinary Review Committee shall produce an annual report that shall contain a summary of findings, actions taken by the department or others and recommendations to each branch of state government to improve practices and prevent future child deaths or near fatalities.

(l) Each Child Death and Near Fatality Multidisciplinary Review Committee member may review the report and submit additional comments that shall be included as an addendum to the report.

(m) The annual report produced by the Child Death and Near Fatality Multidisciplinary Review Committee shall be presented to the House Committee on Aging, Children and Youth, Legislative and

Military Affairs and shall be made available on the public disclosure of child deaths and near fatalities website of the department.

(n) A Child Death and Near Fatality Multidisciplinary Review Committee member shall not be reimbursed for expenses to travel to or participate on the Child Death and Near Fatality Multidisciplinary Review Committee.

(o) The department shall provide office space, materials, and staff assistance to the Child Death and Near Fatality Multidisciplinary Review Committee.

History. Acts 2015, No. 1245, § 1; 2017, No. 302, § 1.

A.C.R.C. Notes. Acts 2015, No. 1245, § 2, provided: “Within thirty (30) days of the appointment of the appointed members of the Child Death And Near Fatality Multidisciplinary Review Committee, the Director of the Department of Human Services shall call the first meeting of the committee.”

Acts 2015, No. 1245, § 3, provided:

“(a) This act expires August 1, 2017.

“(b) On or before August 1, 2017, the House Committee on Aging, Children and Youth, Legislative and Military Affairs shall review this act to determine whether the Child Death and Near Fatality Multidisciplinary Review Committee is needed.”

Amendments. The 2017 amendment substituted “Office of Chief Counsel” for “Office of Policy and Legal Services” in (b)(10).

CHAPTER 26

RIGHTS RESPECTING BUSINESS AND PROPERTY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS UNIFORM TRANSFERS TO MINORS ACT.
3. UNIFORM SECURITIES OWNERSHIP BY MINORS ACT.

RESEARCH REFERENCES

ALR. Testamentary gift to child conditioned upon specified arrangements for parental control. 11 A.L.R.4th 940.

Am. Jur. 38 Am. Jur. 2d, Gifts, § 13.
42 Am. Jur. 2d, Infants, § 38 et seq.
C.J.S. 43 C.J.S., Infants, § 246 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 9-26-101. Rescission of sale, contract, etc., by minor — Restitution.
- 9-26-102. Payment of money or delivery of personal property to minor — Duties of recipient.

SECTION.

- 9-26-103. Ownership of property by persons 18 years of age or older.
- 9-26-104. Removal of disability of a minor.
- 9-26-105. [Repealed.]

Cross References. Age of majority, § 9-25-101.

Effective Dates. Acts 1937, No. 235, § 2: Mar. 10, 1937. Emergency clause provided: "The immediate operation of this act being necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, and this act shall take effect and be in full force immediately from and after its passage and approval."

Acts 1953, No. 337, § 3: Mar. 28, 1953. Emergency clause provided: "There are many persons who are presently dealing in good faith with infants 18 years of age or older who are being damaged unjustly by reason of the infants rescinding sales, contracts to sell, conditional sale contracts, and other contracts without first making full restitution, and this Act is necessary for the preservation of the public peace, health and safety. Therefore, an emergency is hereby declared to exist and this Act shall take full force and effect from and after its passage and approval."

Acts 1969, No. 28, § 4: Feb. 4, 1969. Emergency clause provided: "It is neces-

sary that some minors who have reached the ages mentioned in this act be qualified to act without expensive and delaying procedures, and an emergency is declared for the public peace, health and safety and this act shall take effect and be in full force from and after its passage and approval."

Acts 1975, No. 231, § 5: Feb. 21, 1975. Emergency clause provided: "It is hereby found and determined that the existing laws of this State deny economic privileges to persons under the age of twenty-one (21) which adversely affect the rights, privileges and opportunities of persons under age twenty-one (21) but of the age of eighteen (18) years or over, and that the immediate passage of this Act is necessary to grant all persons eighteen (18) years of age or over the same economic privileges as provided adults. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 620, § 16: July 1, 1975.

9-26-101. Rescission of sale, contract, etc., by minor — Restitution.

(a) In the case of a sale, contract to sell, conditional sale contract, or other contract to which an infant eighteen (18) years of age or older is a party, the sale, contract to sell, conditional sale contract, or other contract cannot be rescinded by the infant unless and until the infant makes full restitution to the other party to the sale, contract to sell, conditional sale contract, or other contract of the property and money received by the infant from the other parties.

(b) Full restitution of property means that the property must be returned in substantially the same condition as received. If this cannot be done, there must be returned the property plus a sum of money that equals the difference between the fair market value of the property at the time the sale, contract to sell, conditional sale contract, or other contract was made and its fair market value at the time of the rescission, or, if the property is no longer in the possession of the infant, there must be returned a sum of money equal to its fair market value at the time the sale, contract to sell, conditional sale contract, or other contract was made.

History. Acts 1953, No. 337, § 1; A.S.A. 1947, § 68-1601.

Publisher's Notes. This section may be affected by § 9-25-101. Acts 1975, No.

892, § 1 amended that section to change the age of majority from 21 years of age to 18 years of age.

CASE NOTES

ANALYSIS

Applicability.
Market Value.
Restitution.

Note. — The following cases were decided prior to the 1975 amendment to § 9-25-101.

Applicability.

The requirement that a minor 18 years old at the time of a purchase cannot rescind the contract of purchase without reimbursing the seller for loss due to rescission does not apply to a contract made by a minor under 18. *Robertson v. King*, 225 Ark. 276, 280 S.W.2d 402 (1955).

Market Value.

Market value may be determined without restitution having been made in kind. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Car's market value at a given prior date can be proved without regard to who happens to have possession of the vehicle at the time of the hearing. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Minor's testimony as to value of his own property was competent as was that of his father, who had owned more than a dozen automobiles. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Restitution.

Evidence showed there was a single transaction, which the minor was entitled to avoid by giving back the only thing he received. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Minor was properly allowed 30 days in which to return an automobile, which was being held in another state for nonpayment of a repair bill. *Security Bank v. McEntire*, 227 Ark. 667, 300 S.W.2d 588 (1957).

Where maker of note was 19, he could be sued for deficiency after sale of repossessed automobile which had been purchased with note, since minors over 18 may rescind contract only if they make full restitution, including a sum of money equal to the difference between market value at time of sale and time of rescission. *Wheless v. Eudora Bank*, 256 Ark. 644, 509 S.W.2d 532 (1974).

9-26-102. Payment of money or delivery of personal property to minor — Duties of recipient.

(a)(1) Any person under a duty to pay or deliver money or personal property to a minor may perform his or her duty, in amounts not exceeding five thousand dollars (\$5,000) per annum, by paying or delivering the money or property to:

(A) The minor, if he or she has attained eighteen (18) years of age or is married;

(B) Any person having the care and custody of the minor with whom the minor resides;

(C) A guardian of the person of the minor; or

(D) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

(2) However, any amounts in excess of one thousand dollars (\$1,000) per annum must also be approved by the circuit court in the county in

this state in which the minor or the person paying or delivering the money or property resides or is domiciled.

(3) This subsection does not apply if the person making payment or delivery has actual knowledge that a guardian of the estate has been appointed or proceedings for appointment of a guardian of the estate of the minor are pending.

(b)(1) The persons, other than the minor or any financial institutions under subdivision (a)(1)(D) of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support.

(2) Any excess sums shall be preserved for the future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he or she attains majority.

(c) Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

History. Acts 1975, No. 620, § 5; A.S.A. 1947, § 57-136.

CASE NOTES

In General.

This section does not dictate the conclusion that a parent may settle claims for less than \$1,000 for a minor, nor does it dispense with the necessity of the ap-

proval of a court of proper jurisdiction in the settlement of a minor's claim for tort. *Walker v. Stephens*, 3 Ark. App. 205, 626 S.W.2d 200 (1981).

9-26-103. Ownership of property by persons 18 years of age or older.

(a) All persons eighteen (18) years of age or older may acquire title to, own, and dispose of real and personal property, both tangible and intangible, in the same manner, and shall be subject to the same rights, obligations, and liabilities with respect thereto as provided for persons twenty-one (21) years of age or older.

(b)(1) It is the intent and purpose of this section to define the economic privileges of persons eighteen (18) years of age or older with respect to the acquisition and disposal of real and personal property and to assure these individuals of the same rights and obligations with respect thereto as are provided by law for persons twenty-one (21) years of age or older.

(2) It is the intent of this section to amend the laws of this state applicable to minors only to the extent as provided in this section. Nothing in this section shall be construed to modify or repeal any of the laws of the state with respect to minors except as specifically provided in this section.

(3) However, nothing in this section shall be construed to authorize or permit persons under twenty-one (21) years of age to purchase alcoholic beverages or to authorize or permit males under the age of twenty-one (21) years of age and females under the age of eighteen (18) years of age to contract marriage except as provided by law.

(c) The provisions of this section shall be supplemental to the laws of this state pertaining to the rights and obligations of minors.

History. Acts 1975, No. 155, §§ 1-3; 1975, No. 231, §§ 1-3; A.S.A. 1947, §§ 50-931, 50-932, 50-932n.

Cross References. Minimum age for marriage, § 9-11-102.

9-26-104. Removal of disability of a minor.

(a) The circuit courts of this state or the respective judges thereof in vacation shall have the power to authorize any person who is a resident of the county and who has reached his or her sixteenth birthday to transact business in general and any particular business specified in like manner and with the same effect as if such act or thing were done by a person who had attained majority. Every act done by a person so authorized shall have the same force and effect in law and equity as if done by a person of full age.

(b) Letters testamentary, of administration, or of guardianship may be granted to any such person, if otherwise entitled by law to have or hold such fiduciary trust, with like effect as if granted to a person over the age of majority.

(c) The order of removal of disabilities may be made by the courts, or the respective judges thereof, in term time or in vacation.

(d)(1) The circuit courts of any county in which a nonresident minor of the State of Arkansas owns real estate, or any interest in real estate, shall have jurisdiction to remove the disabilities of minority of the minor when the person has reached sixteen (16) years of age, as to the real estate. This may be done to enable the minor to sell and convey the real estate, or any interest therein, which may be owned by the minor or to mortgage or otherwise dispose of the real estate, as fully and effectually as if the minor was of full age.

(2) The order of removal of disabilities may be made by the courts, or the respective judges thereof in term time or in vacation, and, if made in vacation, shall be entered at large upon the records of the court.

(e) After the filing of a petition to remove the disability of a minor, the court shall fix a time and place for hearing the petition. At least twenty (20) days before the date of the hearing, notice of the filing of the petition and of the time and place of the hearing shall be given by the petitioner to any parent or legal guardian of the minor who has not joined in the petition. The notice shall be given in the same manner as is provided for summons under the Arkansas Rules of Civil Procedure.

History. Acts 1937, No. 235, § 1; Pope's Dig., § 7453; Acts 1941, No. 336, § 1; 1969, No. 28, § 1; 1969, No. 29, § 1; 1979,

No. 640, §§ 1, 2; A.S.A. 1947, §§ 34-2001, 34-2002; Acts 1989, No. 382, § 1.

A.C.R.C. Notes. Acts 1969, No. 28, § 2

provided that all orders entered before February 4, 1969, removing disabilities of minority of any male who has reached his 18th birthday and of any female who has reached her 16th birthday, would be valid and binding, as far as the age limit is concerned.

As originally enacted, subdivisions (a) and (d)(1) began: "The circuit courts and

the chancery courts." In addition, the first sentence of subdivision (d)(1) provided that the courts: "shall have concurrent jurisdiction." References to chancery courts have been deleted in light of Ark. Const., Amend. 80, which abolished chancery courts and established circuit courts as the trial courts of original jurisdiction, effective July 1, 2001.

CASE NOTES

ANALYSIS

Collateral Attack.

Minor Under Prescribed Age.

Right to Sue or Defend.

Collateral Attack.

A decree removing the disabilities of an infant was open to collateral attack where it failed to show the jurisdictional facts as to his age and residence, but a decree which recited these facts could not be attacked collaterally. *Gilmore v. Union Sawmill Co.*, 178 Ark. 297, 10 S.W.2d 517 (1928).

A decree removing the disabilities of a minor may not be collaterally attacked. *May v. Spivey Chevrolet Co.*, 241 Ark. 1098, 411 S.W.2d 528 (1967).

Minor Under Prescribed Age.

Order removing disabilities of minors under 14 years of age was void. *Dalton v. Bradley Lumber Co.*, 135 Ark. 392, 205 S.W. 695 (1918).

Order removing disability of minority of infant under the age prescribed was void and could be attacked collaterally. *Tays v. Johnson*, 173 Ark. 223, 292 S.W. 122 (1927).

Right to Sue or Defend.

Removal of disabilities authorized minor to sue or defend suit without guardian ad litem. *Merriman v. Sarlo*, 63 Ark. 151, 37 S.W. 879 (1896).

9-26-105. [Repealed.]

Publisher's Notes. This section, concerning the removal of the disability of minority from World War II veterans, was repealed by Acts 1997, No. 838, § 1. The

section was derived from Acts 1945, No. 35, §§ 1, 2; A.S.A. 1947, §§ 11-1703, 11-1704.

SUBCHAPTER 2 — ARKANSAS UNIFORM TRANSFERS TO MINORS ACT

SECTION.

- 9-26-201. Definitions.
- 9-26-202. Scope and jurisdiction.
- 9-26-203. Nomination of custodian.
- 9-26-204. Transfer by gift or exercise of power of appointment.
- 9-26-205. Transfer authorized by will or trust.
- 9-26-206. Other transfer by fiduciary.
- 9-26-207. Transfer by obligor.
- 9-26-208. Receipt for custodial property.
- 9-26-209. Manner of creating custodial property and effecting transfer — Designation of initial custodian — Control.

SECTION.

- 9-26-210. Single custodianship.
- 9-26-211. Validity and effect of transfer.
- 9-26-212. Care of custodial property.
- 9-26-213. Powers of custodian.
- 9-26-214. Use of custodial property.
- 9-26-215. Custodian's expenses — Compensation — Bond.
- 9-26-216. Exemption of a third person from liability.
- 9-26-217. Liability to third persons.
- 9-26-218. Renunciation, resignation, death, or removal of custodian — Designation of successor custodian.

SECTION.

- 9-26-219. Accounting by and determination of liability of custodian.
 9-26-220. Termination of custodianship.
 9-26-221. Applicability.
 9-26-222. Effect on existing custodianships.

SECTION.

- 9-26-223. Uniformity of application and construction.
 9-26-224. Short title.
 9-26-225. Severability.
 9-26-226. Effective date.
 9-26-227. Repealer.

RESEARCH REFERENCES

Ark. L. Rev. Haught, 1988 Update to the Arkansas Probate System: An Overview of Recent Developments in Arkansas Probate Practice, 42 Ark. L. Rev. 631.
 Holmes, Overview of Recent Tax Law Changes Affecting Estate Planning Administration, 42 Ark. L. Rev. 671.

U. Ark. Little Rock L.J. Allison, The Uniform Transfers to Minors Act, etc., 10 U. Ark. Little Rock L.J. 339.

9-26-201. Definitions.

As used in this subchapter:

- (1) "Adult" means an individual who has attained the age of twenty-one (21) years.
- (2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.
- (3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.
- (4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.
- (5) "Court" means any circuit court of competent jurisdiction.
- (6) "Custodial property" means (i) any interest in property transferred to a custodian under this subchapter; and (ii) the income from and proceeds of that interest in property.
- (7) "Custodian" means a person so designated under § 9-26-209 or successor or substitute custodian designated under § 9-26-218.
- (8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (9) "Legal representative" means an individual's personal representative or conservator.
- (10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.
- (11) "Minor" means an individual who has not attained the age of twenty-one (21) years.

(12) “Person” means an individual, corporation, organization, or other legal entity.

(13) “Personal representative” means an executor, administrator, successor personal representative, or special administrator of a decedent’s estate or a person legally authorized to perform substantially the same functions.

(14) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) “Transfer” means a transaction that creates custodial property under § 9-26-209.

(16) “Transferor” means a person who makes a transfer under this subchapter.

(17) “Trust company” means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

History. Acts 1985, No. 476, § 1; A.S.A. 1947, § 50-934.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

9-26-202. Scope and jurisdiction.

(a) This subchapter shall apply to a transfer that refers to this subchapter in the designation under § 9-26-209(a) by which the transfer is made if at the time of the transfer, the transferor, minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this subchapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this subchapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under this subchapter, the Arkansas Uniform Gifts to Minors Act [repealed], or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

History. Acts 1985, No. 476, § 2; A.S.A. 1947, § 50-935.

Arkansas Uniform Gifts to Minors Act, Acts 1967, No. 250, see § 9-26-227.

Publisher’s Notes. As to repeal of Ar-

9-26-203. Nomination of custodian.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act." The nomination may name one (1) or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under § 9-26-209(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under § 9-26-209. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to § 9-26-209.

History. Acts 1985, No. 476, § 3; A.S.A. 1947, § 50-936.

9-26-204. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to § 9-26-209.

History. Acts 1985, No. 476, § 4; A.S.A. 1947, § 50-937.

9-26-205. Transfer authorized by will or trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to § 9-26-209 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under § 9-26-203 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under § 9-26-203, or all persons so nominated as a custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the

custodian from among those eligible to serve as custodian for property of that kind under § 9-26-209.

History. Acts 1985, No. 476, § 5; A.S.A. 1947, § 50-938.

9-26-206. Other transfer by fiduciary.

(a) Subject to subsection (c) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to § 9-26-209, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to § 9-26-209.

(c) A transfer under subsection (a) or (b) of this section may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds ten thousand dollars (\$10,000) in value.

History. Acts 1985, No. 476, § 6; A.S.A. 1947, § 50-939.

9-26-207. Transfer by obligor.

(a) Subject to subsections (b) and (c) of this section, a person not subject to § 9-26-205 or § 9-26-206 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to § 9-26-209.

(b) If a person having the right to do so under § 9-26-203 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c)(1) If a custodian has not been nominated under § 9-26-203, or all nominated custodians die before the transfer or are unable, decline, or are ineligible to serve as a custodian, a transfer under this section may be made on behalf of a minor beneficiary to the minor beneficiary's parent or legal guardian, or to a trust company unless the property exceeds ten thousand dollars (\$10,000) in value except as provided under subdivision (c)(2) of this section.

(2) A survivor benefit due to a minor by the Arkansas Teacher Retirement System under § 24-7-710(c) may be paid on behalf of a minor beneficiary to the minor beneficiary's parent, legal guardian, or legal custodian or to a trust company unless the value of the survivor benefit exceeds twenty thousand dollars (\$20,000) per year.

(3) The Arkansas Teacher Retirement System is not liable for any misuse of funds paid on behalf of a minor beneficiary to a minor beneficiary's parent, legal guardian, or legal custodian under subdivision (c)(2) of this section.

History. Acts 1985, No. 476, § 7; A.S.A. 1947, § 50-940; Acts 2013, No. 174, § 1.

9-26-208. Receipt for custodial property.

A written acknowledgment of delivery by a custodian shall constitute a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this subchapter.

History. Acts 1985, No. 476, § 8; A.S.A. 1947, § 50-941.

9-26-209. Manner of creating custodial property and effecting transfer — Designation of initial custodian — Control.

- (a) Custodial property is created and a transfer is made whenever:
- (1) an uncertificated security or a certificated security in registered form is either:
 - (i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act"; or
 - (ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b) of this section;
 - (2) money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company followed in substance by the words: "as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act";
 - (3) the ownership of a life or endowment insurance policy or annuity contract is either:
 - (i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act"; or
 - (ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act";
 - (4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of

a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than transferor, or a trust company, whose name in the notification is followed in substance by the words: “as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act”;

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act”;

(6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: “as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act”; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: “as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act”; or

(7) an interest in any property not described in paragraphs (1)-(6) of this section is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b) of this section.

(b) An instrument in the following form shall satisfy the requirements of paragraphs (a)(1)(ii) and (7) of this section:

“TRANSFER UNDER THE ARKANSAS
UNIFORM TRANSFERS TO MINORS ACT

I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).
Dated:

(Signature of Custodian)”

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

History. Acts 1985, No. 476, § 9; A.S.A. 1947, § 50-942.

9-26-210. Single custodianship.

A transfer may be made only for one (1) minor, and only one (1) person may be the custodian. All custodial property held under this subchapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

History. Acts 1985, No. 476, § 10;
A.S.A. 1947, § 50-943.

9-26-211. Validity and effect of transfer.

(a) The validity of a transfer made in a manner prescribed in this subchapter shall not be affected by:

(1) failure of the transferor to comply with § 9-26-209(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under § 9-26-209(a); or

(3) death or incapacity of a person nominated under § 9-26-203 or designated under § 9-26-209 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to § 9-26-209 shall be irrevocable, and the custodial property shall be indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this subchapter, and neither the minor nor the minor's legal representative shall have any right, power, duty, or authority with respect to the custodial property except as provided in this subchapter.

(c) By making a transfer, the transferor shall incorporate in the disposition all the provisions of this subchapter and shall grant to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this subchapter.

History. Acts 1985, No. 476, § 11;
A.S.A. 1947, § 50-944.

9-26-212. Care of custodial property.

(a) A custodian shall:

(1) take control of custodial property;

(2) register or record title to custodial property if appropriate; and

(3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability

to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest shall be so identified if it is recorded, and custodial property subject to registration shall be so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for (name of minor) under the Arkansas Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen (14) years.

History. Acts 1985, No. 476, § 12;
A.S.A. 1947, § 50-945.

9-26-213. Powers of custodian.

(a) A custodian, acting in a custodial capacity, shall have all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of § 9-26-212.

History. Acts 1985, No. 476, § 13;
A.S.A. 1947, § 50-946.

9-26-214. Use of custodial property.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of fourteen (14) years, the court may order the custodian to deliver or pay to the minor or expend for the minor's

benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and shall not affect any obligation of a person to support the minor.

History. Acts 1985, No. 476, § 14;
A.S.A. 1947, § 50-947.

9-26-215. Custodian's expenses — Compensation — Bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under § 9-26-204, a custodian shall have a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in § 9-26-218(f), a custodian shall not be required to give a bond.

History. Acts 1985, No. 476, § 15;
A.S.A. 1947, § 50-948.

9-26-216. Exemption of a third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, shall not be responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of, or the authority under this subchapter for, any act of the purported custodian;
- (3) the validity or propriety under this subchapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) the propriety of the application of any property of the minor delivered to the purported custodian.

History. Acts 1985, No. 476, § 16;
A.S.A. 1947, § 50-949.

9-26-217. Liability to third persons.

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian shall not be personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor shall not be personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

History. Acts 1985, No. 476, § 17;
A.S.A. 1947, § 50-950.

9-26-218. Renunciation, resignation, death, or removal of custodian — Designation of successor custodian.

(a) A person nominated under § 9-26-203 or designated under § 9-26-209 as custodian may decline to serve by delivering a valid disclaimer in the form prescribed by § 28-2-106 [repealed] to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under § 9-26-203, the person who made the nomination may nominate a substitute custodian under § 9-26-203; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under § 9-26-209(a). The custodian so designated shall have the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under § 9-26-204 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor shall not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen (14) years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen (14) years, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen (14) years or fails to act within sixty (60) days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the

legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen (14) years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under § 9-26-204 or to require the custodian to give appropriate bond.

History. Acts 1985, No. 476, § 18;
A.S.A. 1947, § 50-951.

9-26-219. Accounting by and determination of liability of custodian.

(a) A minor who has attained the age of fourteen (14) years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under § 9-26-217 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this subchapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under § 9-26-218(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History. Acts 1985, No. 476, § 19;
A.S.A. 1947, § 50-952.

9-26-220. Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) the minor's attainment of twenty-one (21) years of age with respect to custodial property transferred under § 9-26-204 or § 9-26-205, except that any transferor may have custodial property transferred to the minor at any time after the age of eighteen (18) years and before twenty-one (21) years by a designation in the following words or their equivalent: "The custodian shall transfer this property to (name of minor) when (he or she) reaches the age of (age, after eighteen (18) years and before twenty-one (21) years, at which transfer takes place)";

(2) the minor's attainment of age eighteen (18) years with respect to custodial property transferred under § 9-26-206 or § 9-26-207; or

(3) the minor's death.

History. Acts 1985, No. 476, § 20;
A.S.A. 1947, § 50-953.

9-26-221. Applicability.

This subchapter shall apply to a transfer within the scope of § 9-26-202 made after March 21, 1985, if:

(1) the transfer purports to have been made under the Arkansas Uniform Gifts to Minors Act [repealed]; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Arkansas Uniform Gifts to Minors Act [repealed]" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this subchapter is necessary to validate the transfer.

History. Acts 1985, No. 476, § 21; Kansas Uniform Gifts to Minors Act, Acts
A.S.A. 1947, § 50-954. 1967, No. 250, see § 9-26-227.

Publisher's Notes. As to repeal of Ar-

9-26-222. Effect on existing custodianships.

(a) Any transfer of custodial property as now defined in this subchapter made before March 21, 1985, shall be validated notwithstanding that there was no specific authority in the Arkansas Uniform Gifts to Minors Act [repealed] for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This subchapter shall apply to all transfers made before March 21, 1985, in a manner and form prescribed in the Arkansas Uniform Gifts to Minors Act [repealed], except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on March 21, 1985.

(c) Sections 9-26-201 and 9-26-220, with respect to the age of a minor for whom custodial property is held under this subchapter, shall not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of majority under prior law and before March 21, 1985.

History. Acts 1985, No. 476, § 22; Kansas Uniform Gifts to Minors Act, Acts A.S.A. 1947, § 50-955. 1967, No. 250, see § 9-26-227.

Publisher's Notes. As to repeal of Ar-

9-26-223. Uniformity of application and construction.

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among states enacting it.

History. Acts 1985, No. 476, § 23; A.S.A. 1947, § 50-956.

9-26-224. Short title.

This subchapter may be cited as the "Arkansas Uniform Transfers to Minors Act".

History. Acts 1985, No. 476, § 24; A.S.A. 1947, § 50-933.

9-26-225. Severability.

If any provisions of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end provisions of this subchapter are severable.

History. Acts 1985, No. 476, § 25.

9-26-226. Effective date.

It has been found that Acts 1967, No. 250 limits the kinds of properties that may be transferred to the custodian of a minor and there is a need to expand the kinds of properties that may be the subject of a gift to a minor's custodian. Therefore, an emergency is hereby declared to exist and this subchapter, being immediately necessary for the preservation of the free flow of commerce, shall be in full force and effect from and after March 21, 1985.

History. Acts 1985, No. 476, § 26; Kansas Uniform Gifts to Minors Act, Acts A.S.A. 1947, § 50-933n. 1967, No. 250, see § 9-26-227.

Publisher's Notes. As to repeal of Ar-

9-26-227. Repealer.

Acts 1967, No. 250, the Arkansas Uniform Gifts to Minors Act, is hereby repealed. To the extent that this subchapter, by virtue of § 9-26-222(b), does not apply to transfers made in a manner prescribed in the Arkansas Uniform Gifts to Minors Act [repealed] or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the

Arkansas Uniform Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities. All other laws and parts of laws in conflict with this subchapter are hereby repealed.

History. Acts 1985, No. 476, § 27;
A.S.A. 1947, § 50-954n.

SUBCHAPTER 3 — UNIFORM SECURITIES OWNERSHIP BY MINORS ACT

SECTION.

9-26-301. Definitions.

9-26-302. Liability for dealing with minor.

9-26-303. Disaffirmation of transaction by minor.

SECTION.

9-26-304. Construction.

9-26-305. Title.

9-26-306. Severability.

9-26-307. Repealer.

9-26-301. Definitions.

In this subchapter, unless the context otherwise requires:

(a) “Bank” is a bank, trust company, national banking association, savings bank, or industrial bank;

(b) “Broker” is a person, including a bank, lawfully engaged in the business of effecting transactions in securities for the account of others and includes a broker lawfully engaged in buying and selling securities for his or her own account;

(c) “Issuer” is a person who places or authorizes the placing of his or her name on a security other than as a transfer agent to evidence that it represents a share, participation or other interest in his or her property or in an enterprise or to evidence his or her duty to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;

(d) “Person” includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal or commercial entity;

(e) “Security” includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payment out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate or interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing;

(f) “Third-party” is a person other than a bank, broker, transfer agent, or issuer who with respect to a security held by a minor effects a transaction otherwise than directly with the minor;

(g) “Transfer agent” is a person who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of securities, in the issue of new securities, or in the cancellation of surrendered securities.

History. Acts 1963, No. 530, § 1; A.S.A. 1947, § 50-922.

9-26-302. Liability for dealing with minor.

A bank, broker, issuer, third-party, or transfer agent incurs no liability by reason of his or her treating a minor as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third-party, or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, third-party, or transfer agent had actual knowledge of the minority of the holder of the security. Except as otherwise provided in this subchapter, such a bank, broker, issuer, third-party, or transfer agent may assume without inquiry that the holder of a security is not a minor.

History. Acts 1963, No. 530, § 2; A.S.A. 1947, § 50-923.

9-26-303. Disaffirmation of transaction by minor.

A minor, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third-party, or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third-party, or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, third-party, or transfer agent had actual knowledge of the minority of the holder.

History. Acts 1963, No. 530, § 3; A.S.A. 1947, § 50-924.

9-26-304. Construction.

This subchapter shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History. Acts 1963, No. 530, § 4; A.S.A. 1947, § 50-925.

9-26-305. Title.

This subchapter may be cited as the Uniform Securities Ownership by Minors Act.

History. Acts 1963, No. 530, § 5; A.S.A. 1947, § 50-921.

9-26-306. Severability.

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

History. Acts 1963, No. 530, § 6; A.S.A. 1947, § 50-925n.

9-26-307. Repealer.

All laws and parts of laws in conflict with this subchapter are hereby repealed.

History. Acts 1963, No. 530, § 7; A.S.A. 1947, § 50-925n.

CHAPTER 27**JUVENILE COURTS AND PROCEEDINGS****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. JUVENILE OFFICERS. [REPEALED.]
3. ARKANSAS JUVENILE CODE.
4. DIVISION OF DEPENDENCY-NEGLECT REPRESENTATION.
5. EXTENDED JUVENILE JURISDICTION.
6. COMMUNITY MENTAL HEALTH SERVICES FOR JUVENILES.
7. COMMISSION FOR PARENT COUNSEL.

RESEARCH REFERENCES

Am. Jur. 47 Am. Jur. 2d, Juv. Cts., § 1
et seq.
C.J.S. 43 C.J.S., Infants, § 11 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.	SECTION.
9-27-101. [Repealed.]	9-27-103. [Repealed.]
9-27-102. Best interest of child.	

Effective Dates. Acts 1995, No. 1337, § 14: Apr. 17, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that in instances where a determination is to be made as to whether a child should remain in an abusive home, that decision should be made based upon the best interest in the child; that this act so provides; and that this act should go into effect as soon as possible so that the standard is made

clear immediately that the best interest of the child should always be the paramount consideration in determining whether a child is to remain in an abusive home. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

9-27-101. [Repealed.]

Publisher’s Notes. This section, concerning appointment of supervisor of juvenile court work, was repealed by Acts 2011, No. 591, § 3. The section was derived from Acts 1939, No. 280, § 38; 1941, No. 274, § 7; A.S.A. 1947, § 83-143.

9-27-102. Best interest of child.

The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children and that our child welfare system needs to be strengthened by establishing a clear policy of the state that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings. The best interest of the child shall be the standard for juvenile court determinations as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

History. Acts 1995, No. 1337, § 1; 2011, No. 591, § 4.

RESEARCH REFERENCES

Ark. L. Rev. Note, What About the Child?: A Critique of Linker-Flores v. Ar-	kansas Department of Human Services, 60 Ark. L. Rev. 353.
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CASE NOTES

ANALYSIS

Americans with Disabilities Act.
Balancing Interests.
Judicial Authority.

Americans with Disabilities Act.

Rights of a parent under the Americans with Disabilities Act, 42 U.S.C. § 12132, must be subordinated to the protected rights of a child, consistent with the mandate in this section that all juvenile court proceedings be viewed in terms of what is in the best interest of the child. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

Balancing Interests.

Department of Health Services did not violate a father's free exercise of religion by creating a reunification plan which required the father to obtain housing and employment separate and apart from a ministry compound because the state's interest in preventing potential harm to the father's minor children outweighed

the father's conscientious choice to live on ministry property, work for the ministry, and depend on the ministry for the family's every need. *Thorne v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 443, 374 S.W.3d 912 (2010), overruled in part, *Myers v. Ark. Dep't of Human Servs.*, 2011 Ark. 182, 380 S.W.3d 906.

Judicial Authority.

Trial court did not unlawfully delegate judicial authority to therapists who denied parent visitation with child only during periods when court and therapists determined contact would be detrimental to child, because therapists must be given some discretion in carrying out orders of the court where a child's emotional, mental or physical health is at stake. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

Cited: *Earls v. Ark. Dep't of Human Servs.*, 2017 Ark. 171, 518 S.W.3d 81 (2017); *McKinney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 475, 527 S.W.3d 778 (2017).

9-27-103. [Repealed.]

Publisher's Notes. This section, concerning continuity of educational services to foster children, was repealed by Acts

2011, No. 591, § 5. The section was derived from Acts 2005, No. 1255, § 1; 2007, No. 587, § 1.

SUBCHAPTER 2 — JUVENILE OFFICERS

[Repealed.]

SECTION.

9-27-201 — 9-27-206. [Repealed.]

9-27-201 — 9-27-206. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1997, No. 1171, § 3. The subchapter was derived from the following sources:

9-27-201. Acts 1985, No. 550, § 1;
A.S.A. 1947, § 45-701.
9-27-202. Acts 1985, No. 550, § 2;
A.S.A. 1947, § 45-702.
9-27-203. Acts 1985, No. 550, §§ 3, 4;

A.S.A. 1947, §§ 45-703, 45-704; Acts 1997, No. 250, § 52.

9-27-204. Acts 1985, No. 550, § 5;
A.S.A. 1947, § 45-705.

9-27-205. Acts 1985, No. 550, § 6;
A.S.A. 1947, § 45-706.

9-27-206. Acts 1985, No. 550, § 7;
A.S.A. 1947, § 45-707.

SUBCHAPTER 3 — ARKANSAS JUVENILE CODE

SECTION.

- 9-27-301. Title.
- 9-27-302. Purposes — Construction.
- 9-27-303. Definitions.
- 9-27-304. Provisions supplemental.
- 9-27-305. Applicability.
- 9-27-306. Jurisdiction.
- 9-27-307. Venue.
- 9-27-308. Personnel — Duties.
- 9-27-309. Confidentiality of records — Definition.
- 9-27-310. Commencement of proceedings.
- 9-27-311. Required contents of petition.
- 9-27-312. Notification to defendants.
- 9-27-313. Taking into custody.
- 9-27-314. Emergency orders.
- 9-27-315. Probable cause hearing.
- 9-27-316. Right to counsel.
- 9-27-317. Waiver of right to counsel — Detention of juvenile — Questioning.
- 9-27-318. Filing and transfer to criminal division of circuit court.
- 9-27-319. Double jeopardy.
- 9-27-320. Fingerprinting or photographing.
- 9-27-321. Statements not admissible.
- 9-27-322. Release from custody.
- 9-27-323. Diversion — Conditions — Agreement — Completion — Definition.
- 9-27-324. Preliminary investigation.
- 9-27-325. Hearings — Generally.
- 9-27-326. Detention hearing.
- 9-27-327. Adjudication hearing.
- 9-27-328. Removal of juvenile.
- 9-27-329. Disposition hearing.
- 9-27-330. Disposition — Delinquency — Alternatives.
- 9-27-331. Disposition — Delinquency — Limitations.
- 9-27-332. Disposition — Family in need of services — Generally.
- 9-27-333. Disposition — Family in need of services — Limitations — Definitions.
- 9-27-334. Disposition — Dependent-neglected — Generally.
- 9-27-335. Disposition — Dependent-neglected — Limitations.

SECTION.

- 9-27-336. Limitations on detention.
- 9-27-337. Six-month reviews required.
- 9-27-338. Permanency planning hearing.
- 9-27-339. Probation — Revocation.
- 9-27-340. [Repealed.]
- 9-27-341. Termination of parental rights — Definition.
- 9-27-342. Proceedings concerning juveniles for whom paternity not established.
- 9-27-343. Appeals.
- 9-27-344. Monthly report.
- 9-27-345. Admissibility of evidence.
- 9-27-346. Support orders.
- 9-27-347. Probation reports.
- 9-27-348. Publication of proceedings.
- 9-27-349. Compliance with federal acts.
- 9-27-350. Compacts to share costs.
- 9-27-351. Escape considered an act of delinquency.
- 9-27-352. [Repealed.]
- 9-27-353. Duties and responsibilities of custodian.
- 9-27-354. Progress reports on juveniles.
- 9-27-355. Placement of juveniles.
- 9-27-356. Juvenile sex offender assessment and registration.
- 9-27-357. Deoxyribonucleic acid samples.
- 9-27-358. [Repealed.]
- 9-27-359. Fifteenth-month review hearing.
- 9-27-360. Review of termination of parental rights.
- 9-27-361. Court reports.
- 9-27-362. Emancipation of juveniles.
- 9-27-363. Foster youth transition.
- 9-27-364. Division of Youth Services aftercare.
- 9-27-365. No reunification hearing.
- 9-27-366. Confessions.
- 9-27-367. Court costs, fees, and fines.
- 9-27-368. Risk and needs assessments.
- 9-27-369. Resumption of services.
- 9-27-370. Reinstatement of parental rights.
- 9-27-371. Punitive isolation or solitary confinement of juveniles — Definitions.

Publisher's Notes. Former §§ 9-27-301 — 9-27-345, concerning the Arkansas Juvenile Code of 1975, were repealed by

Acts 1989, No. 273, § 47. The former sections were derived from the following sources:

- 9-27-301. Acts 1975, No. 451, § 1; A.S.A. 1947, § 45-401.
- 9-27-302. Acts 1975, No. 451, § 2; 1979, No. 26, § 2; 1979, No. 815, § 10; A.S.A. 1947, §§ 45-402, 45-402.1, 45-406.
- 9-27-303. Acts 1975, No. 451, § 3; 1979, No. 815, § 2; A.S.A. 1947, § 45-403.
- 9-27-304. Acts 1975, No. 451, § 48; A.S.A. 1947, § 45-448.
- 9-27-305. Acts 1975, No. 451, § 4; A.S.A. 1947, § 45-404.
- 9-27-306. Acts 1975, No. 451, §§ 5, 6; 1979, No. 26, § 2; 1979, No. 815, §§ 8, 9; A.S.A. 1947, §§ 45-405 — 45-406.2.
- 9-27-307. Acts 1975, No. 451, § 5; A.S.A. 1947, § 45-405.
- 9-27-308. Acts 1975, No. 451, § 7; A.S.A. 1947, § 45-407.
- 9-27-309. Acts 1975, No. 451, § 42; A.S.A. 1947, § 45-442.
- 9-27-310. Acts 1975, No. 451, §§ 8, 9, 40; 1977, No. 447, § 1; A.S.A. 1947, §§ 45-408, 45-409, 45-440.
- 9-27-311. Acts 1975, No. 451, §§ 10, 11; A.S.A. 1947, §§ 45-410, 45-411.
- 9-27-312. Acts 1975, No. 451, § 12; A.S.A. 1947, § 45-412.
- 9-27-313. Acts 1975, No. 451, § 14; A.S.A. 1947, § 45-414.
- 9-27-314. Acts 1975, No. 451, § 15; A.S.A. 1947, § 45-415.
- 9-27-315. Acts 1975, No. 451, § 17; 1979, No. 815, § 3; A.S.A. 1947, § 45-417.
- 9-27-316. Acts 1975, No. 451, § 18; 1979, No. 815, § 3; 1981, No. 244, § 1; A.S.A. 1947, § 45-418.
- 9-27-317. Acts 1975, No. 451, § 19; 1979, No. 815, § 3; A.S.A. 1947, § 45-419.
- 9-27-318. Acts 1975, No. 451, § 13; 1981, No. 394, § 1; 1985, No. 425, § 2; 1985, No. 672, § 2; A.S.A. 1947, § 45-413; Acts 1987, No. 752, § 1.
- 9-27-319. Acts 1975, No. 451, § 13; 1981, No. 394, § 1; A.S.A. 1947, § 45-413.
- 9-27-320. Acts 1981, No. 393, §§ 1, 2; A.S.A. 1947, §§ 45-453, 45-454.
- 9-27-321. Acts 1981, No. 396, § 1; A.S.A. 1947, § 45-411.1.
- 9-27-322. Acts 1981, No. 396, § 1; A.S.A. 1947, § 45-411.1.
- 9-27-323. Acts 1981, No. 396, § 1; A.S.A. 1947, § 45-411.1.
- 9-27-324. Acts 1975, No. 451, § 20; 1981, No. 397, § 1; A.S.A. 1947, § 45-420.
- 9-27-325. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.
- 9-27-326. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.
- 9-27-327. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.
- 9-27-328. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.
- 9-27-329. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.
- 9-27-330. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.
- 9-27-331. Acts 1975, No. 451, § 21; 1981, No. 111, § 1; A.S.A. 1947, § 45-421.
- 9-27-332. Acts 1975, No. 451, § 22; A.S.A. 1947, § 45-422.
- 9-27-333. Acts 1975, No. 451, § 37; A.S.A. 1947, § 45-437.
- 9-27-334. Acts 1975, No. 451, § 38; 1979, No. 815, § 4; 1981, No. 112, § 1; A.S.A. 1947, § 45-438.
- 9-27-335. Acts 1975, No. 451, §§ 23, 24; 1979, No. 694, §§ 1, 2; A.S.A. 1947, §§ 45-422.1, 45-423, 45-424.
- 9-27-336. Acts 1975, No. 451, § 25; 1979, No. 694, §§ 1, 3; A.S.A. 1947, §§ 45-422.1, 45-425.
- 9-27-337. Acts 1975, No. 451, § 26; A.S.A. 1947, § 45-426.
- 9-27-338. Acts 1975, No. 451, § 27; A.S.A. 1947, § 45-427.
- 9-27-339. Acts 1975, No. 451, § 30; A.S.A. 1947, § 45-430.
- 9-27-340. Acts 1975, No. 451, § 28; A.S.A. 1947, § 45-428.
- 9-27-341. Acts 1975, No. 451, § 28; A.S.A. 1947, § 45-428.
- 9-27-342. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1983, No. 404, § 1; A.S.A. 1947, § 45-436.
- 9-27-343. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; A.S.A. 1947, § 45-436.
- 9-27-344. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; A.S.A. 1947, § 45-436; Acts 1987, No. 673, § 1.
- 9-27-345. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; A.S.A. 1947, § 45-436.
- Former §§ 9-27-346 — 9-27-356, concerning child placement, were repealed by Acts 1989, No. 273, § 47. The former sections were derived from the following sources:
- 9-27-346. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.
- 9-27-347. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.
- 9-27-348. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-349. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-350. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-351. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-352. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-353. Acts 1975, No. 451, § 36; 1981, No. 395, § 1; 1985, No. 868, § 1; A.S.A. 1947, § 45-436.

9-27-354. Acts 1979, No. 815, § 1; A.S.A. 1947, § 45-450.

9-27-355. Acts 1975, No. 451, § 32; A.S.A. 1947, § 45-432.

9-27-356. Acts 1975, No. 451, §§ 6, 35; 1979, No. 26, § 2; A.S.A. 1947, §§ 45-406, 45-435.

Former sections 9-27-357 and 9-27-358 have been renumbered as §§ 9-27-346 and 9-27-347, respectively.

Former §§ 9-27-359 — 9-27-363, concerning juvenile courts and proceedings, were repealed by Acts 1989, No. 273, § 47. The former sections were derived from the following sources:

9-27-359. Acts 1975, No. 451, § 40; 1977, No. 447, § 1; A.S.A. 1947, § 45-440.

9-27-360. Acts 1975, No. 451, § 29; A.S.A. 1947, § 45-429.

9-27-361. Acts 1975, No. 451, § 41; 1979, No. 815, § 7; 1981, No. 804, § 1; A.S.A. 1947, §§ 45-441, 45-441.1.

9-27-362. Acts 1975, No. 451, § 47; A.S.A. 1947, § 45-447; Acts 1987, No. 783, § 1.

9-27-363. Acts 1975, No. 451, § 44; A.S.A. 1947, § 45-444.

Former §§ 9-27-364 — 9-27-366 have been renumbered as §§ 9-27-348, 9-27-349, and 9-27-350, respectively.

Former § 9-27-367, concerning contributing to the delinquency of a minor, was repealed by Acts 1989, No. 273, § 47. The section was derived from Acts 1975, No. 451, § 45; A.S.A. 1947, § 45-445. For current law, see § 5-27-209.

Former § 9-27-368 has been renumbered as § 9-27-351.

Cross References. Jurisdiction of district courts to incarcerate juvenile defendants, § 16-17-133.

Preambles. Acts 2005, No. 1176 contained a preamble which read: "Whereas,

the Arkansas Child Maltreatment Act, Arkansas Code § 12-12-501 et seq., is the law that allows doctors and hospital staff to report child abuse and neglect to the Arkansas State Police Child Abuse Hotline; and

"Whereas, the Arkansas State Police Child Abuse Hotline is a twenty-four-hour toll-free service that triggers the initiation of an investigation of child maltreatment; and

"Whereas, currently, the Arkansas State Police Child Abuse Hotline will not accept reports related to newborn children being born with an illegal substance present in their system as a result of the pregnant mother's use before birth of an illegal substance or with a health problem as a result of the pregnant mother's use before birth of an illegal substance; and

"Whereas, in order for the newborn child to be protected by the Arkansas Child Maltreatment Act and receive services, the Arkansas State Police Child Abuse Hotline must accept reports of this nature; and

"Whereas, this act is necessary to clarify the law so that the Arkansas State Police Child Abuse Hotline can accept reports of this nature and so that the newborn children can be provided services to protect their health and safety.

"Now therefore, . . ."

Effective Dates. Acts 1989, No. 273, § 49: Aug. 1, 1989.

Acts 1989 (3rd Ex. Sess.), No. 34, § 6: Nov. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that since the passage of Act 273 of 1989 there has arisen the need to clarify that certain cases brought by the prosecuting attorney or the Department of Human Services have traditionally been brought without the necessity of payment of a filing fee to the court clerk; that additional confusion has arisen over an unnecessary requirement that the prosecuting attorney accompany delinquency petitions with a supporting affidavit of facts; that these two requirements constitute a burden on the juvenile justice system of this state; that it is in the best interests of all citizens of this state that these matters be clarified; that this act should become effective immediately upon its passage to alleviate these concerns. Therefore, an emergency is hereby declared to exist and this act being neces-

sary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 76, § 4: Nov. 17, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Juvenile Code of 1989 has unreasonably restricted law enforcement officers in their ability to detain juveniles alleged to have committed delinquent acts, that federal requirements permit holding an alleged juvenile for up to twenty-four (24) hours, that it is imperative that law enforcement officers be permitted to hold juveniles longer in order to determine whether the juvenile should be detained or released prior to adjudication. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 763, § 8: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary to prohibit the unnecessary incarceration of juveniles, to prohibit such juveniles from being treated as criminals, to place such juveniles under proper care; and that the immediate passage of this act is necessary for the protection of juveniles. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation and protection of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 11 and 36, § 5: Aug. 22, 1994, Aug. 25, 1994, respectively. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas, meeting in the Second Extraordinary Session of 1994, that the current definition of 'delinquent juvenile' in the Juvenile Code does not include a juvenile who possesses a handgun and, possession of a handgun being a delinquent act, it is necessary immediately to amend the definition. Therefore, in order to amend the definition of 'delinquent juvenile' to include a juvenile who possesses a handgun, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 39 and 40, § 5: Aug. 25, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that the number of serious offenses committed by juveniles has increased dramatically and that the discretion of prosecuting attorneys to charge serious juvenile offenders in circuit court should be broadened in order to deal effectively with those juveniles. Therefore, in order to invest prosecuting attorneys immediately with additional discretion to charge serious juvenile offenders in circuit court, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 55 and 56, § 7: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas, meeting in the Second Extraordinary Session of 1994, that a serious shortage of juvenile detention facilities exists and that there is an urgent need to provide for a longer permissible period during which a juvenile may be held in an adult jail; that in order to enable counties to detain larger numbers of juveniles during the time necessary for such counties to construct additional juvenile detention facilities, the Governor needs authority to grant temporary waivers of certain restrictions on the manner of detaining juveniles; that possession of handguns and other unlawful weapons by juveniles is widespread and such possession contributes greatly to the incidence of violent crimes committed by juveniles; that serious measures are needed to remove handguns and other unlawful weapons from the hands of juveniles and to stop such possession; and that the authority of law enforcement officers to take juveniles into custody needs to be clarified. Therefore, in order to extend the time juveniles may be held in an adult jail; to invest the Governor with authority to grant temporary waivers of certain restrictions on the detention of juveniles; to immediately authorize the seizure, forfeiture, and destruction of unlawful weapons

possessed by juveniles; to authorize the seizure and forfeiture of any vehicle in which a minor unlawfully possesses a weapon; to require detention of any juvenile who possesses a handgun or machine gun; and to clarify the authority of law enforcement officers to take juveniles into custody, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 61 and 62, § 8: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to address the problem of juvenile crime it is necessary to authorize the commitment of delinquent juveniles to juvenile detention facilities; that present law now limits to two thousand dollars (\$2,000) the amount a juvenile can be required to pay as restitution to victims, and that amount is becoming increasingly too low; that this act remedies both situations and should go into effect immediately in order to better protect the citizens of this state from the acts of delinquent juveniles and more adequately compensate the victims through restitution. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 67 and 68, § 5: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that the present law requiring the written agreement of a parent, guardian, or custodian before a juvenile taken into custody on an allegation of delinquency may waive counsel and make a statement severely hampers the ability of law enforcement officers to question detained juveniles. It is further found that confusion exists as to the authority of law enforcement officers to question juvenile witnesses without the prior approval of a parent, guardian, or custodian. Therefore, in order to immediately allow juveniles taken into custody to waive counsel and make a statement under the same stan-

dard as adult arrestees, and to clarify the authority of law enforcement officers to take statements of juvenile witnesses, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1994 (2nd Ex. Sess.), Nos. 69 and 70, § 7: Aug. 26, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that serious criminal offenses committed by juveniles have increased to an alarming level and that to deal effectively with serious juvenile crime prosecuting attorneys have any urgent need to learn of previous juvenile adjudications for which a juvenile could have been charged as an adult, that records of serious juvenile offenses need to be retained for an increased period of time, that school officials and victims need to be allowed to have information concerning the disposition of juvenile offenders, that the burden of proof necessary to revoke a juvenile delinquent's probation should be lessened and the court's dispositional alternatives upon revocation of parole broadened, and that the Arkansas Crime Information Center needs immediate authority to maintain fingerprints and other records of juvenile delinquency adjudications. Therefore, in order to immediately accomplish the above-listed objectives, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 909, § 5: Apr. 5, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that parental rights should be terminated in certain instances of severe sexual and physical abuse in order to protect the welfare of the child; that this act so provides; that this act should go into effect immediately in order to grant maximum protection to minors as soon as possible. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1337, § 14: Apr. 17, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that in instances where a determination is to be made as to whether a child should remain in an abusive home, that decision should be made based upon the best interest in the child; that this act so provides; and that this act should go into effect as soon as possible so that the standard is made clear immediately that the best interest of the child should always be the paramount consideration in determining whether a child is to remain in an abusive home. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1227, § 19: Apr. 7, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an important public interest in providing quality representation to juveniles and parents in dependency-neglect proceedings, pursuant to Ark. Code Ann. 9-27-316. It is further determined that children are the state's most treasured future resource and recent studies indicate that children and their parents have not always received quality representation and sometimes have gone without representation in dependency-neglect proceedings in the past because the counties of Arkansas have been unable to provide adequate representation due to lack of funding and uniform application of the law. To insure the best interests of Arkansas' children in achieving a safe and permanent home, to comply with federal law mandating appointment of guardians ad litem in dependency-neglect cases, and to prevent the loss of federal funding, a statewide system for quality dependency-neglect representation must be established. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective

on the date the last house overrides the veto."

Acts 1999, No. 401, § 20: Mar. 4, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that in November, 1997, the United States Congress passed Public Law 105-89, the Adoption and Safe Families Act. The primary emphasis of the act is ensuring that the health and safety of children is the paramount concern by the child welfare agency and the court in making decisions about the life of a child. The requirements in this state law are a requirement for continued federal funding of child welfare services in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 874, § 3: Mar. 15, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is the best interest of the children of Arkansas that the effectiveness of this act shall be immediate; that in the event of an extension of the regular session, the delay in the effective date of this act could do irreparable harm to the children of this state as well as to interfere with the proper administration and provision of essential government

tal programs; and that this act is immediately necessary to ensure that the placement of children removed from their homes is made in the best interests of the children who are removed from their homes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 1176, § 6: Mar. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that, currently, the Arkansas State Police Child Abuse Hotline will not accept reports related to newborn children being born with an illegal substance present in their blood or urine as a result of the pregnant mother's use before birth of an illegal substance or with a health problem as a result of the pregnant mother's use before birth of an illegal substance; that in order for the newborn child to be protected by the Arkansas Child Maltreatment Act and receive services, the Arkansas State Police Child Abuse Hotline must accept reports of this nature; and that this act is immediately necessary to clarify the law so that the Arkansas State Police Child Abuse Hotline can accept reports of this nature and so that the newborn children can be provided services to protect their health and safety. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 257, § 2: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that juveniles who have committed an offense prior to eighteen (18) years of age are not charged

in the juvenile division of circuit court because an adjudication in the juvenile division of circuit court cannot always be scheduled before the juvenile turns eighteen (18) years of age, despite the fact that the juvenile division of circuit court can continue jurisdiction up to twenty-one (21) years of age; that, as a result, juveniles who would normally be charged in the juvenile division of circuit court are being charged in the criminal division of circuit court; and that this act is immediately necessary because under current law, a juvenile who commits a misdemeanor has no legal consequence because the prosecutor does not have the authority to charge a juvenile misdemeanor in the criminal division of circuit court. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 1022, § 6: Apr. 4, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is a critical need for judicial intervention and support for effective treatment programs that reduce the incidence of drug use, drug addiction, and family separation due to parental substance abuse and drug-related crimes; that this act expands drug court programs and creates the Drug Court Advisory Committee; and that this act is immediately necessary because any delay in the expansion of drug court programs or the creation of the Drug Court Advisory Committee will harm citizens of this state who will benefit from judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 334, § 2: Mar. 10, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that safety of students is of paramount importance to the state; that knowledge of juvenile safety plans are required by court order, the juvenile’s school district must be made aware to ensure the safety of all students; and that this act is immediately necessary to allow school districts to address safety concerns in the schools as quickly and efficiently as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.” The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor

and the veto is overridden, the date the last house overrides the veto.”

Acts 2015, No. 861, § 9: Mar. 31, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that an audit by the Federal Bureau of Investigation found that the Department of Human Services is out of compliance with federal law regarding the confidentiality of criminal background checks; and that this act is immediately necessary because the public health and safety are at risk so long as the department remains out of compliance with federal law because of the threat of easy access to confidential records of criminal background checks. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2015, No. 1038, § 9: Apr. 4, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that federal law requires that the Department of Human Services amend the law addressed in this bill; that state law needs to comply with federal law; and that this act is necessary to avoid a violation of federal law. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, § 129: May 23, 2016. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the membership and duties of certain agencies, task forces, committees, and commissions and repeals other governmental en-

tities; that these revisions and repeals of governmental entities impact the expenses and operations of state government; and that the provisions of this act should become effective as soon as possible to allow for implementation of the new provisions in advance of the upcoming fiscal year. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 189, § 15: July 1, 2020.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that some juveniles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment

Act, § 12-18-101 et seq., and other applicable law; that the creation of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile’s legal rights; that independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the preservation of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2020, No. 144, § 45: July 1, 2020, except §§ 39-41, effective Apr. 20, 2020. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided; with the exception that Sections 39 through 42 in this Act shall be in full force and effect from and after the date of its passage and approval, and that in the event of an extension of the Legislative Session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs, with the exception that Sections 39 through 42 in this Act shall be in full force and effect from and after the date of its passage and approval because it is found and determined by the General Assembly that the Governor has declared a public health emergency due to the spread of an outbreak of coronavirus disease 2019 (COVID-19); that public guidance from federal and state health officials strongly discourages gatherings of more than ten (10) individuals at this time to protect the health, safety, and welfare of Arkansas citizens; and that this act is immediately necessary to allow juvenile proceedings to occur in a time and manner that aligns with public health guidance and ensures the health, safety, and welfare of all parties. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020; with the exception that Sections 39

through Section 42 in this Act shall be in full force and effect from and after the date of its passage and approval."

RESEARCH REFERENCES

ALR. Double jeopardy: applicability to juvenile court proceedings. 5 A.L.R.4th 234.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 A.L.R.4th 1211.

Right of juvenile court defendant to be represented during court proceedings by parent. 11 A.L.R.4th 719.

Criminal responsibility of parent for act of child. 12 A.L.R.4th 673.

Possibility of rehabilitation affecting whether offender is tried as adult. 22 A.L.R.4th 1162.

Delay in arraignment affecting admissibility of confession or other statement made by defendant. 28 A.L.R.4th 1121.

Relief available for violation of right to counsel at sentencing in state criminal trial. 65 A.L.R.4th 183.

Jurisdiction or power of juvenile court to order parent of juvenile to make restitution for juvenile's offense. 66 A.L.R.4th 985.

Defense of infancy in juvenile delinquency proceedings. 83 A.L.R.4th 1135.

Propriety of conditioning probation on defendant's submission to polygraph or other lie detector testing. 86 A.L.R.4th 709.

Propriety of conditioning probation on defendant's submission to drug testing. 87 A.L.R.4th 929.

Minor's entry into home of parent as sufficient to sustain a burglary charge. 17 A.L.R.5th 111.

Statutes protecting minors in a specified age range from rape or other sexual activity as applicable to defendant minor within protected age group. 18 A.L.R.5th 856.

Applicability of rules of evidence to juvenile transfer, waiver, or certification

hearings. 37 A.L.R.5th 703.

Propriety of exclusion of press or other media representatives from civil trial. 39 A.L.R.5th 103.

Validity, construction and application of juvenile escape statutes. 46 A.L.R.5th 523.

Confidential communications between relatives other than husband and wife, testimonial privilege. 62 A.L.R.5th 629.

Juvenile's guilty or no contest plea in adult court as waiver of defects in transfer or certification proceedings. 74 A.L.R.5th 453.

Validity and Efficacy of Minor's Waiver of Right to Counsel — Cases Decided Since Application of Gault. 101 A.L.R.5th 351.

Am. Jur. 47 Am. Jur. 2d, Juv. Cts., § 1 et seq.

Ark. L. Notes. Brummer, A Statutory Primer: The Arkansas Juvenile Code, 1986 Ark. L. Notes 59.

C.J.S. 43 C.J.S., Infants, § 11 et seq.

Ark. L. Rev. Note, Choosing the Forum: Prosecutorial Discretion and Walker v. State, 46 Ark. L. Rev. 985.

Recent Development: Right to Counsel — Termination of Parental Rights, 58 Ark. L. Rev. 753.

U. Ark. Little Rock L.J. Legislative Survey, Juvenile Law, 4 U. Ark. Little Rock L.J. 599.

Survey of Arkansas Law: Family Law, 6 U. Ark. Little Rock L.J. 159.

Casey, Arkansas Juvenile Courts: Do Law Judges Satisfy Due Process in Delinquency Cases?, 6 U. Ark. Little Rock L.J. 501.

Arkansas' Missed Opportunity for Rehabilitation: Sending Children to Adult Courts, 20 U. Ark. Little Rock L.J. 77.

CASE NOTES

ANALYSIS

Applicability.
Criminal Rules.
Discretion of Prosecutor.

Applicability.

The offense of driving while under the influence of intoxicants is a "traffic offense," and under the Juvenile Code the municipal court has jurisdiction to hear such cases. *Robinson v. Sutterfield*, 302 Ark. 7, 786 S.W.2d 572 (1990).

The Juvenile Code and its provisions apply only to proceedings in juvenile court. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994).

Where juvenile had been arrested on a circuit court felony bench warrant, but neither the abstract nor transcript showed a copy of an indictment or information setting out the felony offenses with which the juvenile was charged, the juvenile had not been charged with a felony in circuit court as an adult when the law officers interrogated him and gained his confession; thus, the Juvenile Code was applicable at the time juvenile gave his statement, and his statement was therefore inadmissible at trial be-

cause the law enforcement officer's conduct failed to comport with required Juvenile Code procedures when they obtained juvenile's confession. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994).

Criminal Rules.

The structure and purpose of former subchapter made it incompatible with relief within the scope of Ark. R. Crim. P. 37, which contemplates the trial, conviction, and sentencing of an adult prisoner under the criminal code. *Robinson ex rel. Robinson v. Shock*, 282 Ark. 262, 667 S.W.2d 956 (1984) (decision under prior law).

Discretion of Prosecutor.

This subchapter provides that, when a case involves a juvenile 16 years of age or older, and the alleged act would constitute a felony if committed by an adult, the prosecuting attorney has the discretion to file a petition in juvenile court alleging delinquency, or to file charges in circuit court and to prosecute as an adult. *State v. Pulaski County Circuit-Chancery Court*, 316 Ark. 473, 872 S.W.2d 854 (1994).

Cited: Ark. Dep't of Human Servs. v. Bailey, 318 Ark. 374, 885 S.W.2d 677 (1994).

9-27-301. Title.

This subchapter shall be known and may be cited as the "Arkansas Juvenile Code of 1989".

History. Acts 1989, No. 273, § 1.

CASE NOTES

Funding of Court.

Where circuit and chancery judge issued an order setting the salaries of the judicial district's probation officer and intake officer at \$18,000.00 per year, and petitioners, members of the county quorum court, voted to pay county's share of the salary, but at the rate of only \$15,000.00 per year, petitioners did not

fail to fund the court, there was no showing that level of funding was so low that the court could not effectively operate and the inherent authority doctrine did not apply. *Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990).

Cited: *Patterson v. R.T.*, 301 Ark. 400, 784 S.W.2d 777 (1990); *Robinson v. Sutterfield*, 302 Ark. 7, 786 S.W.2d 572 (1990).

9-27-302. Purposes — Construction.

This subchapter shall be liberally construed to the end that its purposes may be carried out:

(1) To assure that all juveniles brought to the attention of the courts receive the guidance, care, and control, preferably in each juvenile's own home when the juvenile's health and safety are not at risk, that will best serve the emotional, mental, and physical welfare of the juvenile and the best interest of the state;

(2)(A) To preserve and strengthen the juvenile's family ties when it is in the best interest of the juvenile;

(B) To protect a juvenile by considering the juvenile's health and safety as the paramount concerns in determining whether or not to remove the juvenile from the custody of his or her parents or custodians, removing the juvenile only when the safety and protection of the public cannot adequately be safeguarded without such removal;

(C) When a juvenile is removed from his or her own family, to secure for him or her custody, care, and discipline with primary emphasis on ensuring the health and safety of the juvenile while in the out-of-home placement; and

(D) To assure, in all cases in which a juvenile must be permanently removed from the custody of his or her parents, that the juvenile be placed in an approved family home and be made a member of the family by adoption;

(3) To protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation and rehabilitative restitution, recognizing that the application of sanctions that are consistent with the seriousness of the offense is appropriate in all cases; and

(4) To provide means through which the provisions of this subchapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

History. Acts 1989, No. 273, § 2; 1999, No. 401, § 1; 2007, No. 587, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 911.

Jerald A. Sharum, The Arkansas Supreme Court's Unconstitutional Power

Grab in Arkansas Department of Human Services v. Shelby and the Judiciary's Authority in Child-Welfare Cases, 37 U. Ark. Little Rock L. Rev. 391 (2015).

CASE NOTES

ANALYSIS

Purpose.
 Applicability.
 Best Interests.
 Trial Court's Authority.

Purpose.

Trial court properly terminated the parental rights of the mother and father under § 9-27-341 and found that each parent, either as the offender or as the accomplice, had committed a felony battery against a grandson of the mother because the mother's story that she was not involved was implausible considering the medical testimony; termination was in the child's best interests under § 9-27-341(b)(3)(A)(i) and (ii) given that the child was a dependent-neglected child under § 9-27-303, and one purpose of subdivision (2)(B) of this section was to protect a juvenile's safety. *Todd v. Ark. Dep't of Human Servs.*, 85 Ark. App. 174, 151 S.W.3d 315 (2004).

Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its jurisdiction under subdivision (1) of this section to act to protect the integrity of the proceeding and to safeguard the rights of the litigants before it when it ordered DHS to correct problems that were preventing work and services. *Ark. Dep't of Human Servs. v. Shelby*, 2012 Ark. 54 (2012).

Although initially identified as a putative parent and a paternity test established that he was the father, nothing in the record showed that the father's legal status as a putative parent or biological parent, as defined in § 9-27-303, was established to apply the 12-month time period described in § 9-27-341(b)(3)(B)(i)(b) or (b)(3)(B)(ii)(a), and therefore the circuit court erred in terminating his parental

rights. This interpretation supported the goal of the juvenile system provided in this section, which shall be liberally construed. *Earls v. Ark. Dep't of Human Servs.*, 2017 Ark. 171, 518 S.W.3d 81 (2017).

Applicability.

Nowhere in this section is it suggested, or even implied, that the provisions of this subchapter are applicable to an unborn fetus still in its mother's womb. *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003).

Best Interests.

Trial court erred under subdivisions (1) and (2)(A) of this section in awarding permanent custody to maternal grandparents on the ground that it was in the children's best interest; while the children's father had some issues to resolve, since the case was commenced, a mere six months before the trial court awarded the grandparents custody, he had no positive drug tests, maintained employment, and was living in an approved housing situation with his parents. *Chase v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 311, 416 S.W.3d 252 (2012).

Trial Court's Authority.

Trial court's order did not violate § 9-28-207 as it did not dictate placement but stated only that if the juvenile was going to be in the Department of Human Services' custody, he had to receive treatment. *Ark. Dep't of Human Servs. v. State*, 2017 Ark. App. 137, 516 S.W.3d 743 (2017).

Cited: *Ark. Dep't of Human Servs. v. Clark*, 304 Ark. 403, 802 S.W.2d 461 (1991); *Valdez v. State*, 33 Ark. App. 94, 801 S.W.2d 659 (1991); *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994); *King v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 464, 562 S.W.3d 226 (2018).

9-27-303. Definitions.

As used in this subchapter:

(1) "Abandoned infant" means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an

expression of intent by words, actions, or omissions not to return for the infant;

(2)(A) "Abandonment" means:

(i) The failure of the parent to provide reasonable support for a juvenile and to maintain regular contact with a juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future;

(ii) The failure of a parent to support or maintain regular contact with a child without just cause; or

(iii) An articulated intent to forego parental responsibility.

(B) "Abandonment" does not include a situation in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources;

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme or repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face;

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Urinating or defecating on a child;

(e) Pinching, biting, or striking a child in the genital area;

(f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) Narcotics; or

(4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;

(i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

(j) Subjecting a child to Munchausen syndrome by proxy, also known as “factitious illness by proxy”, when reported and confirmed by medical personnel or a medical facility; or

(viii) Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C)(i) “Abuse” shall not include:

(a) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

(b) Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(1) The person exercising the restraint is an employee of a residential childcare facility licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(2) The person exercising the restraint is acting in his or her official capacity while on duty at a residential childcare facility or the residential childcare facility is exempt from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(3) The agency has policies and procedures regarding restraints;

(4) Other alternatives do not exist to control the child except for a restraint;

(5) The child is in danger of hurting himself or herself or others;

(6) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(7) The restraint is:

(A) For a reasonable period of time; and

(B) In conformity with training and agency policy and procedures.

(ii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks.

(iii) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) "Adjudication hearing" means a hearing to determine whether the allegations in a petition are substantiated by the proof;

(5) "Adult sentence" means punishment authorized by the Arkansas Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-507, for the act or acts for which the juvenile was adjudicated delinquent as an extended juvenile jurisdiction offender;

(6) "Aggravated circumstances" means:

(A) A child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, sexually exploited, or a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification;

(B) A child has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months; or

(C) A child or a sibling has been neglected or abused such that the abuse or neglect could endanger the life of the child;

(7) "Attorney ad litem" means an attorney appointed to represent the best interest of a juvenile;

(8) "Caretaker" means a parent, guardian, custodian, foster parent, significant other of the child's parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, or any person responsible for a child's welfare;

(9) "Case plan" means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;

(10)(A) "Cash assistance" means short-term financial assistance.

(B) "Cash assistance" does not include:

(i) Long-term financial assistance or financial assistance that is the equivalent of the board payment, adoption subsidy, or guardianship subsidy; or

(ii) Financial assistance for car insurance;

(11) "Commitment" means an order of the court that places a juvenile in the physical custody of the Division of Youth Services for placement in a youth services facility;

(12) “Court” means the juvenile division of circuit court;

(13) “Court-appointed special advocate” means a volunteer appointed by the court to advocate for the best interest of juveniles in dependency-neglect proceedings;

(14)(A) “Custodian” means a person other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order.

(B) For the purposes of who has a right to counsel under § 9-27-316(h), “custodian” includes a person to whom a court of competent jurisdiction has given custody, including a legal guardian;

(15) “Delinquent juvenile” means:

(A) A juvenile ten (10) years old or older who:

(i) Has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state;

(ii) Has violated § 5-73-119; or

(iii) Has violated § 5-71-217(d)(2), cyberbullying of a school employee; or

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

(16) “Dependent juvenile” means:

(A)(i) A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child.

(ii) If the reason for the incarceration is related to the health, safety, or welfare of the child, the child is not a dependent juvenile but may be dependent-neglected;

(B) A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(C) A child whose custodial parent dies and no appropriate relative or friend is willing or able to provide care for the child;

(D) A child who is an infant relinquished to the custody of the Department of Human Services for the sole purpose of adoption;

(E) A safe haven baby, § 9-34-201 et seq.;

(F) A child who has disrupted his or her adoption, and the adoptive parents have exhausted resources available to them; or

(G)(i) A child who has been a victim of human trafficking.

(ii) If the parent knew or should have known the child was a victim of human trafficking, the child is not a dependent juvenile but may be dependent-neglected;

(17)(A) “Dependent-neglected juvenile” means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile:

- (i) Abandonment;
- (ii) Abuse;
- (iii) Sexual abuse;
- (iv) Sexual exploitation;
- (v) Neglect;
- (vi) Parental unfitness; or

(vii) Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.

(B) "Dependent-neglected juvenile" includes dependent juveniles;

(18) "Detention" means the temporary care of a juvenile in a physically restricting facility other than a jail or lock-up used for the detention of adults prior to an adjudication hearing for delinquency or pending commitment pursuant to an adjudication of delinquency;

(19) "Detention hearing" means a hearing held to determine whether a juvenile accused or adjudicated of committing a delinquent act or acts should be released or held prior to adjudication or disposition;

(20) "Deviant sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(21) "Disposition hearing" means a hearing held following an adjudication hearing to determine what action will be taken in delinquency, family in need of services, or dependency-neglect cases;

(22) "Extended juvenile jurisdiction offender" means a juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the court;

(23) "Family in need of services" means any family whose juvenile evidences behavior that includes, but is not limited to, the following:

(A) Being habitually and without justification absent from school while subject to compulsory school attendance;

(B) Being habitually disobedient to the reasonable and lawful commands of his or her parent, guardian, or custodian; or

(C) Having absented himself or herself from the juvenile's home without sufficient cause, permission, or justification;

(24)(A) "Family services" means relevant services provided to a juvenile or his or her family, including, but not limited to:

- (i) Child care;
- (ii) Homemaker services;
- (iii) Crisis counseling;
- (iv) Cash assistance;
- (v) Transportation;
- (vi) Family therapy;
- (vii) Physical, psychiatric, or psychological evaluation;
- (viii) Counseling;

- (ix) Treatment; or
- (x) Post-adoptive services.

(B) Family services are provided in order to:

- (i) Prevent a juvenile from being removed from a parent, guardian, or custodian;
- (ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed;
- (iii) Implement a permanent plan of adoption or guardianship for a juvenile in a dependency-neglect case; or
- (iv) Rehabilitate a juvenile in a delinquency or family in need of services case;

(25) "Fast track" means that reunification services will not be provided or will be terminated before twelve (12) months of services;

(26)(A) "Fictive kin" means a person selected by the Division of Children and Family Services who:

- (i) Is not related to a child by blood or marriage; and
- (ii) Has a strong, positive, and emotional tie or role in the:
 - (a) Child's life; or
 - (b) Child's parent's life if the child is an infant.

(B) The Director of the Division of Children and Family Services or his or her designee shall approve a fictive kin for an infant;

(27)(A) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person.

(B) If the act was committed against the will of the juvenile, then forcible compulsion has been used.

(C) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(28) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(29)(A) "Home study" means a written report that is obtained after an investigation of a home by the department or other appropriate persons or agencies and that shall conform to rules established by the department.

(B)(i) An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within thirty (30) working days of the receipt of the request for the home study.

(ii) The results of the criminal records check shall be provided to the court as soon as they are received.

(iii) The circuit clerk of the county court shall:

(a) Keep a record of the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation for the court;

(b) Permit only the court and the employees of the clerk's office with an official reason to view the information in the national fingerprint-based criminal background check;

(c) Not permit anyone to obtain a copy of the national fingerprint-based criminal background check; and

(d) Permit a person specifically ordered by the court to view the information in the national fingerprint-based criminal background check.

(iv)(a) The department shall share the information obtained from the criminal records check and the national fingerprint-based criminal background checks only with employees of the department who have an official business reason to see the information.

(b) Unless specifically ordered to do so by the court, the department shall not share the information obtained from the criminal records check and the national fingerprint-based criminal background checks with persons not employed by the department.

(C)(i) The department may obtain a criminal background check on any person in the household sixteen (16) years of age and older, including a fingerprint-based check of national crime information databases.

(ii) Upon request, local law enforcement shall provide the department with criminal background information on any person in the household sixteen (16) years of age and older;

(30) "Imminent harm" means an act of harm that is a danger:

(A) To the physical, mental, or emotional health of a juvenile;

(B) That is constrained by time; and

(C) That may only be prevented by immediate intervention by a court;

(31) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(32) "Independence" means a permanency planning hearing disposition known as "Another Planned Permanent Living Arrangement (APPLA)" for the juvenile who will not be reunited with his or her family and because another permanent plan is not in the juvenile's best interest;

(33) "Juvenile" means an individual who is:

(A) From birth to eighteen (18) years of age, whether married or single; or

(B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of circuit court prior to eighteen (18) years of age and for whom the juvenile division of circuit court retains jurisdiction;

(34) "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits

under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;

(35) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses;

(36) "Miranda rights" means the requirement set out in *Miranda v. Arizona*, 384 U.S. 436 (1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

(37)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, that constitute:

(i) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

(ii) Failure or refusal to provide the necessary food, clothing, shelter, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that does not pose a risk to the health or safety of the juvenile;

(v) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility;

(vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone:

(a) At an inappropriate age, creating a dangerous situation or a situation that puts the juvenile at risk of harm; or

(b) In inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm;

(viii) Failure to appropriately supervise the juvenile that results in the juvenile being placed in:

(a) Inappropriate circumstances, creating a dangerous situation; or

(b) A situation that puts the juvenile at risk of harm; or

(ix)(a) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home-schooled; or

(b) As a result of an act or omission by the parent, custodian, or guardian of a child, the child is habitually and without justification absent from school.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) For the purposes of this subdivision (37)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (37)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances or the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (37)(B)(i)(b) of this section;

(38)(A) "Notice of hearing" means a notice that describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for appointment of counsel, if indigent, or a uniform notice as developed and prescribed by the Supreme Court.

(B) The notice of hearing shall be served in the manner provided for service under the Arkansas Rules of Civil Procedure;

(39) "Order to appear" means an order issued by the court directing a person who may be subject to the court's jurisdiction to appear before the court at a date and time as set forth in the order;

(40)(A) "Out-of-home placement" means:

(i) Placement in a home or facility other than placement in a youth services center, a detention facility, or the home of a parent or guardian of the juvenile; or

(ii) Placement in the home of an individual other than a parent or guardian, not including any placement when the court has ordered that the placement be made permanent and ordered that no further reunification services or six-month reviews are required.

(B) "Out-of-home placement" shall not include placement in a youth services center or detention facility as a result of a finding of delinquency;

(41) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(42) "Paternity hearing" means a legal proceeding to determine the biological father of a juvenile;

(43) "Permanent custody" means custody that is transferred to a person as a permanency disposition in a juvenile case and the case is closed;

(44) "Pornography" means:

(A) Pictures, movies, and videos lacking serious literary, artistic, political, or scientific value that when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(45)(A) "Predisposition report" means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any disability, the name of the juvenile's attorney and, if appointed by the court, the date of the appointment, any participation by the juvenile or his or her family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile, and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family.

(B) The predisposition report shall include a home study of any out-of-home placement that may be part of the disposition;

(46) "Prosecuting attorney" means an attorney who is elected as district prosecuting attorney, the duly appointed deputy prosecuting attorney, or any city prosecuting attorney;

(47) "Protection plan" means a written plan developed by the department in conjunction with the family and support network to protect the juvenile from harm and which allows the juvenile to remain safely in the home;

(48) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile who claims to be or is alleged to be the biological father of the juvenile;

(49)(A)(i) "Reasonable efforts" means efforts to preserve the family before the placement of a child in foster care to prevent the need for

removing the child from his or her home and efforts to reunify a family made after a child is placed out of his or her home to make it possible for him or her to safely return home.

(ii) Reasonable efforts shall also be made to obtain permanency for a child who has been in an out-of-home placement for more than twelve (12) months or for fifteen (15) of the previous twenty-two (22) months.

(iii) In determining whether or not to remove a child from a home or return a child back to a home, the child's health and safety shall be the paramount concern.

(iv) The department or other appropriate agency shall exercise reasonable diligence and care to utilize all available services related to meeting the needs of the juvenile and the family.

(v)(a) "Reasonable efforts" include efforts to involve an incarcerated parent.

(b) The department shall:

(1) Involve an incarcerated parent in case planning;

(2) Monitor compliance with services offered by the Division of Correction to the extent permitted by federal law; and

(3) Offer visitation in accordance with the policies of the Division of Correction if visitation is appropriate and in the best interest of the child.

(B) The juvenile division of circuit court may deem that reasonable efforts have been made when the court has found that the first contact by the department occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided.

(C) Reasonable efforts to reunite a child with his or her parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

(i) Subjected the child to aggravated circumstances;

(ii) Committed murder of any child;

(iii) Committed manslaughter of any child;

(iv) Aided or abetted, attempted, conspired, or solicited to commit the murder or the manslaughter;

(v) Committed a felony battery that results in serious bodily injury to any child;

(vi) Had the parental rights involuntarily terminated as to a sibling of the child;

(vii) Abandoned an infant as defined in subdivision (1) of this section; or

(viii) Registered with a sex offender registry under the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

(50) "Residence" means:

(A) The place where the juvenile is domiciled; or

(B) The permanent place of abode where the juvenile spends an aggregate of more than six (6) months of the year;

(51)(A) "Restitution" means actual economic loss sustained by an individual or entity as a proximate result of the delinquent acts of a juvenile.

(B) Such economic loss shall include, but not be limited to, medical expenses, funeral expenses, expenses incurred for counseling services, lost wages, and expenses for repair or replacement of property;

(52) "Safety plan" means a plan ordered by the court to be developed for an adjudicated delinquent sex offender under § 9-27-356 who is at moderate or high risk of reoffending for the purposes of § 9-27-309;

(53) "Sexual abuse" means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live human sexual activity;

(B) By a person eighteen (18) years of age or older to a person who is younger than fifteen (15) years of age and is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or

(iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;

(C) By a person twenty (20) years of age or older to a person who is younger than sixteen (16) years of age who is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or

(iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing listening to a phone sex line; or

(vi) An act of voyeurism;

(E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion; and

(F) By a person eighteen (18) years of age or older to a person who is younger than eighteen (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act;

(54)(A) "Sexual contact" means any act of sexual gratification involving:

(i) Touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile;

(ii) Encouraging the juvenile to touch the offender in a sexual manner; or

(iii) Requesting the offender to touch the juvenile in a sexual manner.

(B) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment.

(C) This subdivision (54) shall not permit normal, affectionate hugging to be construed as sexual contact;

(55) "Sexual exploitation" includes:

(A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:

(i) Prostitution;

(ii) Obscene photographing; or

(iii) Obscene filming; and

(B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose;

(56) "Shelter care" means the temporary care of a juvenile in physically unrestricting facilities under an order for placement pending or under an adjudication of dependency-neglect or family in need of services;

(57) "Significant other" means a person:

(A) With whom the parent shares a household; or

(B) Who has a relationship with the parent that results in the person acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;

(58) "Temporary custody" means custody that is transferred to a person during the pendency of the juvenile court case when services are being provided to achieve the goal of the case plan;

(59) "Trial placement" means that custody of the juvenile remains with the department, but the juvenile is returned to the home of a parent or the person from whom custody was removed for a period not to exceed sixty (60) days;

(60) "UCCJEA" means the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(61) "UIFSA" means the Uniform Interstate Family Support Act, § 9-17-101 et seq.;

(62) “Victim” means any person or entity entitled to restitution as defined in subdivision (51) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

(63) “Victim of human trafficking” means a child who has been subjected to trafficking of persons as defined in § 5-18-103;

(64)(A) “Voyeurism” means looking for the purpose of sexual arousal or gratification into a private location or place in which a juvenile may reasonably be expected to be nude or partially nude.

(B) This definition does not apply to delinquency actions;

(65) “Youth services center” means a youth services facility operated by the state or a contract provider; and

(66) “Youth services facility” means a facility operated by the state or its designee for the care of juveniles who have been adjudicated delinquent or convicted of a crime and who require secure custody in either a physically restrictive facility or a staff-secured facility operated so that a juvenile may not leave the facility unsupervised or without supervision.

History. Acts 1989, No. 273, § 3; 1993, No. 468, § 4; 1993, No. 1126, §§ 1, 2; 1993, No. 1227, § 1; 1994 (2nd Ex. Sess.), No. 11, § 1; 1994 (2nd Ex. Sess.), No. 36, § 1; 1995, No. 532, §§ 1-4; 1995, No. 804, § 1; 1995, No. 811, § 2; 1995, No. 1261, § 13; 1997, No. 208, § 8; 1997, No. 1227, § 1; 1999, No. 401, §§ 2-4; 1999, No. 1192, § 12; 1999, No. 1340, §§ 1-7, 35; 2001, No. 1503, § 1; 2001, No. 1610, § 1; 2003, No. 1166, § 2; 2003, No. 1319, §§ 1-8; 2005, No. 1176, § 3; 2005, No. 1191, § 1; 2005, No. 1990, § 1; 2007, No. 587, §§ 3-9; 2009, No. 956, § 5; 2011, No. 792, §§ 1-5; 2011, No. 793, § 7; 2011, No. 1175, § 1; 2013, No. 761, § 1; 2013, No. 1055, §§ 1-7, 18; 2013, No. 1431, § 3; 2015, No. 861, § 2; 2015, No. 1034 § 1; 2015, No. 1092, §§ 2, 3; 2017, No. 209, §§ 1-4; 2017, No. 700, § 1; 2017, No. 993, §§ 1, 2; 2019, No. 315, § 719; 2019, No. 554, § 1; 2019 No. 910, § 690; 2019, No. 927, § 1.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, as reenacted by Acts 2017, No. 255, § 1, provided: “Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, and ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code of 1987 Annotated.”

Acts 2005, No. 1176, § 1, provided: “This act shall be known and may be cited as ‘Garrett’s Law: To Provide Services to a Newborn Child Born with an Illegal Substance Present in the Child’s System’.”

Pursuant to Acts 2011, No. 793, § 9, the amendments of § 9-27-303 by Acts 2011, No. 793, § 7 were deemed to be superseded by Acts 2011, No. 792, § 1.

Acts 2013, No. 1431, § 1, provided: “LEGISLATIVE FINDINGS.

“The General Assembly finds that:

“(1) The successful recruitment and retention of school employees is essential to maintaining the state’s constitutional obligation to provide a free and efficient system of public education;

“(2) A safe and civil environment in any school is necessary for school employees to meet the objective of providing opportunities for students to learn and achieve high academic standards;

“(3) Cyberbullying of school employees has become a national problem, subjecting school employees to many forms of intentional harassment that can be emotionally and professionally devastating;

“(4) Because of the nature of online communications, students may feel they can act with anonymity and detachment when they are engaging in cyberbullying of a school employee;

“(5) Some examples of the means used by students are:

“(A) Building a fake profile or website;

“(B) Posting or encouraging others to post on the Internet private, personal, or

sexual information pertaining to a school employee;

“(C) Posting an original or edited image of the school employee on the Internet;

“(D) Accessing, altering, or erasing any computer network, computer data, computer program, or computer software, including breaking into a password-protected account or stealing or otherwise accessing passwords of a school employee;

“(E) Making repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a school employee;

“(F) Making, or causing to be made, and disseminating an unauthorized copy of data pertaining to a school employee in any form, including without limitation the printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network;

“(G) Signing up a school employee for a pornographic Internet site; or

“(H) Without authorization of the school employee, signing up a school employee for electronic mailing lists or to receive junk electronic messages and instant messages; and

“(6) This act is intended to heighten public attention to this crime and further protect an Arkansas public school employee from cyberbullying.”

Amendments. The 2015 amendment by No. 861 added (29)(B)(iii) and (iv); substituted “department may” for “person or agency conducting the home study shall have the right to” in (29)(C)(i); and substituted “department” for “person or agency conducting the home study” in (29)(C)(ii).

The 2015 amendment by No. 1034 deleted (17)(A) [now (16)(A)] and redesignated the remaining subdivisions accordingly.

The 2015 amendment by No. 1092 redesignated former (2) as (2)(A); added (2)(B); and added (25)(A)(x) [now (24)(A)(x)].

The 2017 amendment by No. 209 added (3)(A)(viii); in (17)(G)(i) and (ii) [now (16)(G)(i) and (ii)], deleted “as a result of threats, coercion, or fraud” following “human trafficking”; added (52)(F) [now (53)(F)]; and added the definition for “Victim of human trafficking”.

The 2017 amendment by No. 700 added the definition for “Fictive kin”.

The 2017 amendment by No. 993 repealed the definition for “Department”; substituted “Department of Human Services” for “department” in (48)(A)(iv) and (48)(B); added (48)(A)(v); and added “Pub. L. No. 109-248” in (48)(C)(viii) [subdivision (48) is now subdivision (49)].

The 2019 amendment by No. 315 substituted “rules” for “regulations” in (29)(A).

The 2019 amendment by No. 554, in (36)(A)(ix)(b) [now (37)(A)(ix)(b)], substituted “As a result of an act or omission by the parent, custodian, or guardian of a child, the child is habitually” for “As a result of the acts or omissions by the juvenile’s parent or guardian, the juvenile is habitually”.

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” in (48)(A)(v)(b)(2) and (48)(A)(v)(b)(3) [subdivision (48) is now subdivision (49)].

The 2019 amendment by No. 927 added the definition for “Imminent harm”.

U.S. Code. The Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, referred to in this section, is codified as 34 U.S.C. § 20901 et seq.

Cross References. Handguns — Possession by minor or possession on school property, § 5-73-119.

Voluntary placement of a child, § 9-34-201 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Comment: The Perpetuation of Illusory Rights in the Arkansas Juvenile Code, 57 Ark. L. Rev. 275 (2004).

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Family Law, 24 U. Ark. Little Rock L. Rev. 1021.

Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 911.

Mary Ward, Note: Arkansas’s Human Trafficking Laws: Steps in the Right Direction or a False Sense of Accomplishment?, 37 U. Ark. Little Rock L. Rev. 133 (2014).

CASE NOTES

ANALYSIS

Constitutionality.
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Constitutionality.

Definition for “Delinquent juvenile” in this section, which sets out the age of a juvenile offender and defines the type of behavior that will cause one to be classified as a delinquent juvenile, is not facially void, as under the definition a juvenile would only have to look to the criminal code and city ordinances to determine what constitutes proscribed acts. *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993).

Abandonment.

Trial court erred in terminating the father’s parental rights based on abandonment because the father was in prison throughout the entirety of the proceeding, there was no evidence that he was served with the emergency order of custody, and the trial court’s orders repeatedly found him to be in noncompliance with a case plan of which he had no knowledge. *Brinkley v. Ark. Dep’t of Human Servs.*, 2017 Ark. App. 625, 533 S.W.3d 639 (2017).

Termination of the father’s parental rights based on subjecting the children to aggravated circumstances by abandoning them was proper because the father was

aware that his children had been placed in foster care and adjudicated dependent-neglected; despite his knowledge of the proceedings, there was no proof of any contact with his children throughout the case either while he was incarcerated, while he was out on bond, after he had been released to the halfway house, or after he had returned to court for his originally scheduled termination hearing; and there was no evidence that the father took advantage of any opportunities to have contact with his children that would have been available to him in prison or in the halfway house. *Clark v. Ark. Dep’t of Human Servs.*, 2018 Ark. App. 243, 548 S.W.3d 216 (2018).

Court of Appeals affirmed the finding that the Department of Human Services proved the ground of abandonment because the evidence was sufficient to support a conclusion that the father failed to support or maintain regular contact with his child without just cause; by his own testimony, the father attended only three visits in 2017, and he admitted that he exercised three visits in January 2018 only after his lawyer told him it would look better for him. *Norris v. Ark. Dep’t of Human Servs.*, 2018 Ark. App. 571, 567 S.W.3d 861 (2018).

Evidence was sufficient to support the trial court’s termination of the father’s parental rights based on the statutory ground of abandonment because the father testified that he purposely avoided involvement in the case, he knew that the children were in the custody of the Department of Human Services and that legal proceedings were being pursued but he chose not to participate, the children spent over one year in foster care and the father had no contact or visitation with them during that year, and the father’s explanations for his absence were considered by the trial court and deemed unjustified. *Burns v. Ark. Dep’t of Human Servs.*, 2019 Ark. App. 253, 576 S.W.3d 505 (2019).

Abuse.

Order finding that a mother’s 11-month-old child was dependent-neglected under this section on the basis that the mother subjected the child to Munchausen syndrome by proxy was proper; even though

no medical professional had raised any concerns prior to the child's admission to the hospital, the appellate court deferred to the trial court's superior position to observe the parties and judge the witnesses' credibility. *Parker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 18, 380 S.W.3d 471 (2011).

Sufficient evidence supported the trial court's determination that appellant's children were dependent-neglected based on an allegation of abuse by choking under subdivision (3)(A) of this section, because appellant's daughter testified that her father held her down on a bed, placed his hands around her neck, and choked her; she was not able to breathe. Her brother confirmed that the choking took place and his father ordered him to restrain her legs during the incident; a family-service worker also testified that appellant admitted to her that the incident occurred. *Lynch v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 149 (2012).

Court erred in adjudicating the children as dependent-neglected, because the Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. *Johnson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 244, 413 S.W.3d 549 (2012).

There was testimony that one child had gotten a whipping with a belt from her mother, resulting in welts on her back, and thus the circuit court could and did decide that abuse had been proven by a preponderance of the evidence; while only one child had signs of physical abuse, the statute is clear that a juvenile can be at risk of serious harm, and thus dependent-neglected, based on an act of abuse inflicted on the juvenile's sibling, and the adjudication of the mother's children as dependent-neglected was affirmed. *Turner v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 655 (2014).

Mother asserted that because the slapping was a one-time incident, and no physical injury occurred, the circuit court erred in finding that the mother had committed abuse; while she was correct as to the abuse finding, as the evidence showed that fighting between the mother and her

daughters had increased and become volatile, and both girls expressed that they were happier now and wished to remain in their father's custody, the circuit court did not clearly err in finding that a material change of circumstances had occurred and that the change of custody was in the children's best interest. *Earl v. Earl*, 2015 Ark. App. 663, 476 S.W.3d 206 (2015).

In a dependency-neglect proceeding, a circuit court's finding of physical abuse as to the mother was reversed where the mother was not home at the time of another child's unexplained death, testimony that the mother had previously spanked one child did not support a finding that she had abused all of her children, and there was testimony that the children did not feel unsafe around her. *Young v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 270, 549 S.W.3d 383 (2018).

Circuit court did not find that spanking alone constituted abuse; rather, it had considered the age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries when it determined whether the physical discipline was reasonable or moderate. *Phillips v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 463, 560 S.W.3d 499 (2018).

Parents' challenge to the definition of Munchausen syndrome by proxy as explained to the trial court by the physician was rejected because there was no requirement that the parent had to be diagnosed with Munchausen syndrome by proxy before the child could be found to be dependent-neglected based on it, and there is no indication in this section that the Diagnostic and Statistical Manual of Mental Disorders has been adopted as authority for this section. *Schneider v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 455 (2020).

Trial court correctly found that the child was dependent-neglected as a result of abuse, neglect, and parental unfitness based on the mother's subjecting him to Munchausen syndrome by proxy, the parents' failure or refusal to provide the necessary nutrition and medical treatment for the child, the mother's exaggeration or misrepresentation of symptoms to medical providers, and the father's acquiescence to the mother's false reporting. *Schneider v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 455 (2020).

Aggravated Circumstances.

Termination of the father's parental rights was affirmed based on the finding of aggravated circumstances, given that there was clear evidence that reunification services were unlikely to succeed; the father never fully complied with the case plan, he did not understand the significance of his violent tendencies, and the results of his psychological evaluation and his therapist's testimony supported the finding that further services would likely not help the father and termination was necessary to protect the child. *Weathers v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 142, 433 S.W.3d 271 (2014).

Trial court's finding that the mother abandoned her child under this section was not clearly erroneous given her leaving her nine-month-old child in a trash can in a dark area at 9 p.m. with the understanding that no one might find the child. *Cole v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 395 (2014).

Finding of aggravated circumstances because of extreme cruelty was not clearly against the preponderance of the evidence; the mother suffered from significant and untreated mental health conditions, the father knew the child was not safe in the mother's care but left the child with her anyway, the mother placed harmful medications within the child's reach, which resulted in a life-threatening event for the child, as she was found to have tramadol and methadone in her system, and the trial court found that the father was not credible, to which finding the court deferred. *Callison v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 592, 446 S.W.3d 210 (2014).

In a dependent-neglect case, an aggravated circumstances finding that the abuse or neglect suffered by an injured child could have endangered his life was not clearly erroneous; the child suffered a skull fracture that required an emergency surgery to evacuate a hematoma. Moreover, at the adjudication stage, it did not matter which of the parents might have committed the abuse or neglect. *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 503, 471 S.W.3d 231 (2015).

Appeal.

After trial court entered order finding that child was a member of a family in need of services the father attempted to

appeal on the child's behalf but he was not a licensed attorney who could represent the child on an appeal, and the matter was not a final order. *Bass v. State*, 93 Ark. App. 411, 219 S.W.3d 697 (2005).

Order finding that a father's three children were dependent-neglected under subdivision (18)(A)(iii) (now (17)(A)(iii)) of this section based upon his sexual abuse of one of the children was proper because the father failed to object to supporting documentation attached to a report to the prosecuting attorney; hence, that assignment of error could not be reviewed on appeal. *Blanchard v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 785, 379 S.W.3d 686 (2010).

Trial court did not err in terminating the mother's parental rights because there was sufficient evidence to support a finding that termination was in the child's best interest, and the Department of Human Services had proved that the mother had abandoned the child and had subjected him to aggravated circumstances under § 9-27-341(b)(3)(B)(ix)(a)(3)(B) and subdivision (1) of this section. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. *Fant v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 428 (2012).

In a termination of parental rights case where the mother did not challenge a finding of aggravated circumstances in an appeal from the adjudication hearing, the issue could not be raised on review of the decision terminating parental rights. *Hannah v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 502 (2013).

Circuit court issued a written order finding the children dependent-neglected due to abuse, and thus the finding of abuse was included in the written order and was preserved for appeal. *Ward v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 491 (2014).

In this dependent-neglected child case, because the finding of abuse by the circuit court was not in error, the arguments regarding the circuit court's finding of neglect due to inadequate supervision were not addressed. *Ward v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 491 (2014).

Aggravated circumstances finding was a separate finding made in addition to the dependency-neglect finding, and the parents' challenge to the aggravated-circumstances finding was part of the adjudica-

tion decision and was properly before the court on appeal. *Callison v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 592, 446 S.W.3d 210 (2014).

Challenge to the aggravated-circumstances finding in the adjudication order is properly before the appellate court on an appeal from the adjudication order even when the appellant concedes the dependency-neglect finding. *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 503, 471 S.W.3d 231 (2015).

Trial court's finding of dependency-neglect was affirmed where the mother failed to challenge the alternate finding that the children were at a substantial risk of harm as a result of educational neglect based on the mother's admission that she did not have one child enrolled in school for an entire school year. *Trotty v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 557, 504 S.W.3d 636 (2016).

Custodian.

Department of Human Services is a custodian for purposes of the provision assessing costs and restitution, in §§ 9-27-330 and 9-27-331. *Ark. Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

The mere status of stepfather does not entitle that person to notice and participation in the question of protective services or custody; something more must be shown to qualify as standing in loco parentis under subdivision (14) of this section. *Stair v. Phillips*, 315 Ark. 429, 867 S.W.2d 453 (1993).

Delinquent Juvenile.

The offense of driving while under the influence of intoxicants is a "traffic offense," and under the Juvenile Code the municipal court has jurisdiction to hear such cases. *Robinson v. Sutterfield*, 302 Ark. 7, 786 S.W.2d 572 (1990); *J.B. v. State*, 309 Ark. 70, 827 S.W.2d 144 (1992).

Construing "minor in possession of a handgun" in violation of § 5-73-119(a)(1) in tandem with the grant of jurisdiction to juvenile court in § 9-27-306(a)(1) and the definition of "delinquent juvenile" in this section, provides the juvenile court with jurisdiction of the handgun charge. *Jones v. State*, 319 Ark. 762, 894 S.W.2d 591 (1995).

Because a juvenile's father had not resorted to use of a deadly weapon during an

argument, because there had been an interlude of approximately five minutes since their last confrontation, because the father, at the time he was struck, had turned away from the juvenile, and because the juvenile did not testify as to whether the juvenile's beliefs were reasonable, the juvenile lacked justification under §§ 5-1-102(18), 5-2-606(a)(1), 5-2-607(a)(1), (2), and was properly adjudicated as a delinquent for second-degree domestic battering. *D.W. v. State*, 2011 Ark. App. 187 (2011).

Dependent Juvenile.

On appeal from the termination of her parental rights, the mother's argument that it was a logical fallacy and inconsistent with legislative intent under § 9-27-341(b)(3)(B)(i)(a) that the definition of "dependent-neglected juvenile" included a "dependent" child was without merit because the statute's clear and unambiguous language expressed that a dependent-neglected juvenile included a dependent juvenile. The child met the definition of a "dependent juvenile" under former subdivision (17)(A) of this section because his mother was in the custody of the Department of Human Services; moreover, subdivision (18)(B) (now (17)(B)) of this section provided that a dependent-neglected juvenile included dependent juveniles and therefore, the child also fell within the definition of a dependent-neglected juvenile. *K.C. v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 353, 374 S.W.3d 884 (2010) (decided before 2015 amendment).

Dependent-Neglect Adjudication.

A dependent-neglect adjudication is a hearing to determine whether allegations in a petition are substantiated by the proof, and its thrust is the protection of a juvenile who is at substantial risk of serious harm. *Fariss v. State*, 303 Ark. 541, 798 S.W.2d 103 (1990).

Child of parent with bipolar disorder held to be dependent-neglected. *Johnston v. Ark. Dep't of Human Servs.*, 55 Ark. App. 392, 935 S.W.2d 589 (1996).

A newborn infant was properly found to be a dependent-neglected juvenile where the infant's older sister was seriously abused by the mother and/or the father; even if one of the parents could successfully deflect blame for the actual injuries the sister suffered to the other parent, the

uncontroverted testimony established that such injuries were noticeable and inflicted over a long period of time, so that the parent who did not actually inflict the injuries was still unfit on the basis that he or she did not notice obvious signs of abuse. *Brewer v. Ark. Dep't of Human Servs.*, 71 Ark. App. 364, 43 S.W.3d 196 (2001).

To hold that a court must find that a child is at substantial risk of serious harm on the day of an adjudication would mandate that no child could be found dependent/neglected after being placed into the Department of Human Services custody; thus, mother's argument that her children could not have been dependent since they were out of her custody for a year at the time of the filing was rejected as meritless. *Harwell-Williams v. Ark. Dep't of Human Servs.*, 368 Ark. 183, 243 S.W.3d 898 (2006).

Trial court erred in finding that father's child was a dependent-neglected child because, after the father was incarcerated, there were two different family members who stated they were willing to care for the child. *Moiser v. Ark. Dep't of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

Trial court did not err in finding that the Department of Health and Human Services failed to meet its burden of proving that children were dependent-neglected because there was no evidence other than the fact that their father had pleaded guilty to sexual assault of other minors. *Ark. Dep't of Health & Human Servs. v. Mitchell*, 100 Ark. App. 45, 263 S.W.3d 574 (2007).

Where appellant allowed his daughter to live in the residence of a ministry with a man who was accused of perpetrating physical and sexual abuse against children, appellant's failure to protect his daughter from potential harm was more than enough to warrant her being found dependent-neglected within the meaning of this section. The evidence also showed that appellant's daughter was not properly immunized, was diagnosed with child maltreatment syndrome-sexual and adjustment disorder with anxiety, and mental health therapy was recommended; there was sufficient evidence to declare her dependent-neglected. *Seago v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733 (2009).

Circuit court did not err in adjudicating children dependent-neglected after they were removed from a ministry compound because the evidence established a clear picture of the danger to children in the ministry compound because there was testimony that many children were beaten, placed on fasts, and imprisoned in a warehouse for eight months; there was further evidence that the ministry leader molested girls and "married" several young girls and that it was normal for underage girls to be married to much older men. In spite of evidence demonstrating that sexual abuse of underage girls, beatings, and fasts were widely known within the ministry, the father denied knowing of any potential danger to his children; the evidence sufficiently demonstrated that the environment in which the father placed his children was dangerous. *Broderick v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 771, 358 S.W.3d 909 (2009).

Father's argument that the circuit court erred in adjudicating the child dependent-neglected because, although the mother's relapse into drugs might have constituted such neglect, there was no evidence that he neglected the child, was without merit. The juvenile code was not concerned, at the adjudication stage, with which parent committed the acts constituting dependency-neglect; because of the mother's relapse into drug use, the child was unquestionably dependent-neglected, as defined in this section. *Tadlock v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 841, 372 S.W.3d 403 (2009).

Evidence was sufficient to support the circuit court's adjudication that a father's son was dependent-neglected because the father failed to supervise due to drinking, caused his son mental and physical injury due to alcohol abuse, and was an unfit parent because of the alcohol abuse, and there was ample evidence that the father abused alcohol, drank before driving his automobile with his son as a passenger, and drank before wrecking a golf cart in which his son was riding; the father acknowledged that he had not stopped drinking at the time of the hearing and had no good reason for not doing so, and it was the opinion of the son's therapist that the father's drinking caused the son stress and negative behaviors, that the son demonstrated signs of emotional abuse, and that he suffered mental injury caused by

the father. *Hays v. Ark. Dep't of Health & Human Servs.*, 2009 Ark. App. 864, 372 S.W.3d 830 (2009).

Although the circuit court abused its discretion in allowing intoxication testimony under the business-records exception to hearsay evidence, *Ark. R. Evid.* 803(6), a father suffered no actual prejudice by the testimony, and its admission was harmless; the testimonies of the son's mother, a police officer, the son's therapist, and his caseworker, coupled with the father's driving while intoxicated convictions and his admissions about use of alcohol, were more than sufficient to substantiate findings that the father's neglect and parental unfitness arose from alcohol abuse and had a negative effect on the child. *Hays v. Ark. Dep't of Health & Human Servs.*, 2009 Ark. App. 864, 372 S.W.3d 830 (2009).

Adjudication order finding that the father's two children were dependent-neglected was affirmed because direct proof of sexual gratification was not necessary in that such a purpose could be inferred from the circumstances; the son stated that the father touched him inappropriately on his genitals and buttocks in a manner that made him feel uncomfortable. *Ashcroft v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 244, 374 S.W.3d 743 (2010).

Trial court's finding that a mother's children were dependent-neglected was not clearly against the preponderance of the evidence and the trial court did not abuse its discretion in affording greater weight to the opinion of a forensic psychologist, who conducted a psychological examination of the mother, than a social worker's opinion because the mother's history of chaotic relationships and living situations soundly supported the psychologist's prognosis that the mother's chances of achieving stability were poor; at the time the Department of Human Services (DHS) took the children into custody, they were living with their maternal grandmother because the mother wanted to avoid having DHS take them into custody, the mother and her methamphetamine-addicted husband had lived with a family friend for over a year, during which time the friend had molested one of her children, and the mother failed a drug test and did not have a job. *McCann v. Ark.*

Dep't of Human Servs., 2010 Ark. App. 828 (2010).

Adjudication of the child as dependent-neglected was supported by evidence that the mother used drugs, which exposed the mother to criminal liability, which inevitably would affect the child's well being because the mother could not care for the child if incarcerated, and the mother's ability to care for the child may have been impaired while under the influence. *Maynard v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 82, 389 S.W.3d 627 (2011).

Sufficient evidence supported a circuit court's adjudication of two children as dependent-neglected as the parents had a history of drug use, and there was nothing to prevent them from removing the children from a grandmother's house. The children were at substantial risk of neglect or parental unfitness as defined by this section. *Chambers v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 91 (2011).

Trial court properly found that the Department of Health and Human Services had proven by a preponderance of the evidence that the child of a mother and a father was dependent-neglected under this section due to the condition of the house in which he lived as there were numerous things that the caseworker observed in the house that could harm the child, including open containers of chemicals, knives and guns within his reach, broken glass on the floor, and various unsanitary conditions. *Duvall v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 261, 378 S.W.3d 873 (2011).

Trial court did not err in adjudicating a mother's daughter dependent-neglected on the ground that the daughter was at substantial risk of future sexual abuse by her six-year-old brother because the mother had missed her psychological-evaluation appointment and resisted efforts to remedy household instability and neglect. *Weatherspoon v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 34 (2012).

Order adjudicating appellant's daughter dependent-neglected was affirmed because the daughter had been involved in a fight with a male and had suffered a head injury, which required medical attention, and the daughter showed up at a hearing in juvenile court without a parent or guardian present. *Lowe v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 155 (2012).

Finding that the adopted daughter was dependent-neglected as a result of sexual abuse by the father was not clearly erroneous, because the daughter testified that her father first touched her inappropriately when she was eleven years old, the daughter testified that the abuse hurt and that she would try to pull away, and the court expressly found the testimonies of the daughter and the certified sexual-assault examiner to be both credible and consistent with each other. *Wells v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 176 (2012).

Order in which the child was adjudicated dependent-neglected was affirmed because there was a true prior finding by investigators that appellant and the paternal grandfather subjected the child to extreme and repeated cruelty; appellant and the paternal grandfather would record inappropriate interviews with the child that were emotionally traumatizing. *Stoliker v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 415, 422 S.W.3d 123 (2012).

Trial court did not err in adjudicating a mother's infant son dependent-neglected because the trial court was faced with the uncontested prior finding that one of the infant's siblings had been physically abused while under the age of one, even though the offender was unknown. *Eason v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 507, 423 S.W.3d 138 (2012).

Mother failed to take reasonable action to protect one child after she knew the mother's husband had sexually abused the child, and the mother facilitated a conversation between the child and her husband and encouraged the child to tell the husband she loved him, and thus the trial court did not clearly err in adjudicating this child and another child as dependent-neglected. *Wear v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 702 (2013).

Evidence supported a dependency-neglect finding because a parent threatened to harm an employee of the child's school after an altercation and threatened to commit suicide and kill the parent's children in a phone call to the school the next day. Moreover, the parent had been emotionally erratic and depressed following the death of a parent the year before and had a short temper and was possibly sleep-deprived due to her nighttime em-

ployment. *Clary v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 338 (2014).

In this dependency-neglect case, mother's counsel claimed that the Department of Human Services should have proven the termination of her rights to another child by written documentation, but that rule concerns authentication and identification of evidence and has nothing to do with the best-evidence rule, which applies only when a party tries to prove the content of a writing; while a document would have demonstrated termination, nothing prohibited the mother from testifying to any fact within her personal knowledge and the question of whether her rights had been terminated resided within her personal experience, and she admitted the same. *Goodwin v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 599, 445 S.W.3d 547 (2014).

Mother's admission that her rights to one of her children had been terminated, that other states had taken another child into custody, and that she did not have custody of any of her children was sufficient to show by a preponderance of the evidence that the child in question in this case was at substantial risk of serious harm because of neglect or parental unfitness; the dependency-neglect ruling was not clearly against the preponderance of the evidence after considering the mother's history of unfitness, unstable housing, and her current inability to support herself. *Goodwin v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 599, 445 S.W.3d 547 (2014).

While the affidavit mentioned only physical abuse, the petition itself alleged abuse, neglect, and parental unfitness, and the trial court adjudicated the children dependent-neglected based on all three grounds as alleged in the petition, and the father's notice argument failed. *Beeckman v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 192 (2015).

Photographs showed that the child sustained physical injuries, the trial court could reasonably have found that the father's striking the child repeatedly with a chair was not an accident, the trial court was not required to believe the father's assertion that his actions constituted physical discipline that was reasonable and thus not abuse, and the trial court did not clearly err in adjudicating the children dependent-neglected due to abuse. *Beeck-*

man v. Ark. Dep't of Human Servs., 2015 Ark. App. 192 (2015).

Dependent-Neglected Juvenile.

Trial court properly terminated the parental rights of the mother and father under § 9-27-341 and found that each parent, either as the offender or as the accomplice, had committed a felony battery against a grandson of the mother because the mother's story that she was not involved was implausible considering the medical testimony; termination was in the child's best interests under § 9-27-341(b)(3)(A)(i) and (ii) given that the child was a dependent-neglected child under this section, and one purpose of § 9-27-302(2)(B) was to protect a juvenile's safety. *Todd v. Ark. Dep't of Human Servs.*, 85 Ark. App. 174, 151 S.W.3d 315 (2004).

Trial court did not err in adjudicating parents' children dependent-neglected because injuries to their infant had to be the result of a high-force trauma, and a caregiver would have had to know the infant suffered the trauma; yet no one sought medical care for the infant immediately after whatever event caused the injuries, which consisted of multiple rib fractures, a skull fracture, bruises, and retinal hemorrhaging. *Churchill v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 530, 423 S.W.3d 637 (2012).

Children were improperly removed from a father's care and determined to be dependent-neglected because the evidence did not support a finding of inadequate supervision based on the father's lost knife, and the evidence did not clearly establish that the father cut a child with a knife. Moreover, there was no indication that the father's hitting a child on the face or head with his hand was knowing and intentional or whether it occurred on more than one occasion. *Figueroa v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 83 (2013).

Given the conclusive finding that a child's older siblings were dependent-neglected, and the additional evidence of the child's medical needs, the circuit court's finding that the child was dependent-neglected was not clearly erroneous or clearly against the preponderance of the evidence. *Hernandez v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 424 (2013).

After an adjudication hearing, the court found that the Department of Human

Services had proved, not by just a preponderance of the evidence, but by clear and convincing evidence that the child was exposed to extreme cruelty and abuse. The court noted eight separate injuries, none of which had plausible explanations, and found that the child was dependent-neglected and had been subjected to aggravated circumstances. *Hannah v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 502 (2013).

In this dependent-neglected child case, the lack of a reference in the order to an injury at variance with the history given was of no consequence, as the circuit court clearly indicated that its finding of abuse was based on an injury at variance with the history given, and that finding was supported by the testimony. *Ward v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 491 (2014).

In this dependent-neglected child case, as there was no indication that the child was not in the parents' legal custody at the time of his injury, the injury was caused either by them or by someone they entrusted with the child's care. *Ward v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 491 (2014).

Mother conceded that sexual abuse of her child by her boyfriend occurred, and that finding alone was sufficient to support the conclusion that the child was dependent-neglected; the court would not second-guess credibility determinations by the circuit court, which did not clearly err in its ruling. *Middlebrook v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 161 (2015).

In a dependent-neglect case, there was a substantial risk of harm to a sibling of an injured child because of the unexplained abuse and neglect suffered by the injured child. *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 503, 471 S.W.3d 231 (2015).

Child was properly adjudicated as dependent-neglected because the child was left unsupervised with her mother, who had drug and mental health issues; moreover, grandmother was unable to adequately supervise the child due to her substance abuse issues with prescribed medication. *Harris v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 508, 470 S.W.3d 316 (2015).

Trial court's adjudication of the parents' son as dependent-neglected was not

clearly erroneous or clearly against the preponderance of the evidence where the evidence showed that the father inadequately supervised his son, placing him at substantial risk of serious harm, as there was testimony that the nursing staff had instructed the father that the mother was not to be left alone while breastfeeding their son, the nurses denied that they had left the mother alone, and the son was dropped by his mother who was under the influence of pain medication. *Samuels v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 2, 479 S.W.3d 596 (2016).

Trial court erred in denying a petition by the Department of Human Services to adjudicate a mother's two younger children dependent-neglected because the younger children were at substantial risk of serious harm as a result of both the mother's abuse of the older child and the younger children themselves where the mother admitted to hitting the older child with a cookie sheet and whipping the children with an extension cord, all of the children had loop-shaped injuries that the trial court recognized were from being hit with the extension cord, and even if the loop-shaped injuries were old, they demonstrated that the children were at substantial risk of similar harm in the future. *Ark. Dep't of Human Servs. v. Walker*, 2016 Ark. App. 203, 489 S.W.3d 214 (2016).

Circuit court did not clearly err in adjudicating a child dependent-neglected because it had more than a preponderance of the evidence of a substantial risk of serious harm to the child; the Department of Human Services investigated and substantiated reports of severe environmental neglect in the parents' household, and it attempted, unsuccessfully, to resolve the environmental neglect issues. *Bean v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 350, 498 S.W.3d 315 (2016).

Circuit court did not clearly err in finding insufficient evidence of dependency-neglect and dismissing the dependency-neglect case where there was no dispute that a baby's fall was an accident, and the court found the mother more credible than a police officer that she was not going to leave the baby with the intoxicated father. *Ark. Dep't of Human Servs. v. Lewis*, 2017 Ark. App. 140, 515 S.W.3d 176 (2017).

Circuit court's order adjudicating an infant dependent-neglected was reversed

where it based the decision on the fact that two other children had been removed from the mother, the fact that the removal order was entered before the infant's birth indicated that the circuit court had no intention of assessing the level of risk posed to the infant at the time of birth, and the court had focused on the mother's and father's mindset, which, standing alone, was not a basis for adjudication. *Haney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 437, 526 S.W.3d 903 (2017).

Definition of dependency-neglect under this section does not require that the trial court identify the perpetrator of the sexual abuse. *Parnell v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 108, 538 S.W.3d 264 (2018) (sub. op. on reh'g).

Trial court found that the child was sexually abused, probably by his father, and the failure to identify the perpetrator of the sexual abuse did not diminish the trial court's finding of dependency-neglect; at the termination hearing, the trial court found that the father had in fact sexually abused the child, a sibling of the triplets, and as the mother was aware of the father's status as a sex offender and failed to protect the child, termination of her rights under § 9-27-341(b)(3)(B)(vi) was proper. *Parnell v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 108, 538 S.W.3d 264 (2018) (sub. op. on reh'g).

In a dependency-neglect proceeding, a circuit court's finding of parental unfitness was reversed where there was no evidence of the mother's involvement in another child's unexplained death, and a physician testified that the child's injuries from abuse would not have been obvious and visible to the mother. *Young v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 270, 549 S.W.3d 383 (2018).

Dependent-neglected finding upheld. *Ward v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 376, 553 S.W.3d 761 (2018).

Evidence supported the trial court's determination that the child was dependent-neglected based on the mother's parental unfitness because the child's sibling was found dependent-neglected and remained in the Department of Human Services' custody, the mother had not complied with the case plan in the sibling's case, the mother had tested positive for drugs throughout her entire pregnancy with the child, and she had not submitted to ran-

dom drug screens since the child's birth. *Hilburn v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 420, 558 S.W.3d 885 (2018).

Evidence was sufficient to show that a child was dependent-neglected based on physical abuse where the circuit court found that the father lacked credibility and his memory was poor as to how the child sustained bruises unless it improved his position, and the father admitted that he likely caused the bruises by spanking the child. *Phillips v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 463, 560 S.W.3d 499 (2018).

Evidence was sufficient to support a finding that a child was dependent-neglected because a neighbor witnessed the child having vaginal and oral sex with a young teenage male; an investigator testified that the conclusion of the Arkansas State Police investigation was a true finding of "sexually aggressive behavior". *Salinas v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 72, 572 S.W.3d 389 (2019).

Circuit court's finding that a child was a dependent-neglected juvenile, at substantial risk of serious harm based on neglect and parental unfitness, was not clearly erroneous because the mother's lack of supervision was directly connected to the sexual assault a teenage male perpetrated on the child; despite the circuit court's order to provide "line-of-sight" supervision and the "red flags" the mother saw, she permitted the child to play with the male unsupervised, which resulted in sexual abuse; and this was the second time in two years that the child had been sexually abused while in her mother's care. *Salinas v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 72, 572 S.W.3d 389 (2019).

Circuit court's finding that three other children of the mother were dependent-neglected was not clearly against the preponderance of the evidence because the court did not make an automatic finding of dependency-neglect but made a specific finding that all the children were at substantial risk of harm as a result of the mother's acts or omissions; there was evidence that one of the children was experiencing mental-health issues due to the guilt she suffered when her sibling was sexually abused. *Salinas v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 72, 572 S.W.3d 389 (2019).

Trial court did not err in finding dependency-neglect based on sexual abuse although the prosecutor had declined to pursue charges; the trial court found that the child disclosed facts in her interview that would not have been known to a child of her age, especially as she was delayed, and there were no hearsay objections or objections of any other kind and therefore the trial court had before it testimony from a sexual-assault nurse, the medical examination record, and the specific allegations of abuse the child made during her interview, which supported the trial court's finding. *Libokmeto v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 274, 577 S.W.3d 35 (2019).

After a child's death, the trial court did not err in finding the other children dependent-neglected where the evidence showed that the mother knew the juveniles would be at a substantial risk of serious harm if left in the grandmother's and sister's care in their home, she knew that the grandmother's house had prescription pills lying around within the children's reach, the mother had her own drug issues, and she frequently left the children with the grandmother and sister despite the fact that they were under investigation for selling drugs out of their house. *Cramer v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 571, 589 S.W.3d 491 (2019).

Facts supported a finding of dependency-neglect based on neglect and parental unfitness because the trial court did not adjudicate a child dependent-neglected based merely on the fact that the parents' older child had previously been adjudicated dependent-neglected. The evidence showed that the severity of the injuries suffered by the older child, the mother's refusal to hold the father accountable for the older child's injuries, and the mother's willingness to allow the father into the child's life, placed the child at substantial risk of serious harm. *Ring v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 150, 596 S.W.3d 76 (2020).

Trial court's finding the children dependent-neglected was not clearly erroneous because the evidence showed that one of the children had numerous injuries that the mother was unable to explain, the mother did not take the child to the doctor for her finger injury but waited because she had an appointment already sched-

uled two days later, and the injury required the child to stay in the hospital several days because of fears of infection, a need for surgery, and loss of the finger. *McCord v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 244, 599 S.W.3d 374 (2020).

Directed Verdict.

Although a circuit court's grant of a motion for directed verdict by the Department of Human Services at the close of its case in chief in a dependency-neglect proceeding under this section was improper under Ark. R. Civ. P. 50(a), the appellate court refused to reverse the adjudication order because the parents failed to raise their Rule 50 argument in the trial court. *Reid v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 156 (2010).

Double Jeopardy.

Defendant's prosecution for incest was not barred by dependent-neglect civil proceeding brought by the Department of Human Services as the defendant simply was not threatened with multiple punishments and the double jeopardy clause was not offended. *Fariss v. State*, 303 Ark. 541, 798 S.W.2d 103 (1990).

Family in Need of Services.

Where children were alleged to have committed burglary and acts of criminal mischief, it was proper to adjudicate the family in need of services. *Byler v. State*, 306 Ark. 37, 810 S.W.2d 941 (1991).

It is entirely clear that by using the words "includes, but is not limited to," the legislature intended a broader concept of a family in need of services than the three illustrations listed in the statute. *Byler v. State*, 306 Ark. 37, 810 S.W.2d 941 (1991).

Where a mother made unsubstantiated sexual abuse allegations, a trial court did not err by awarding custody to a father in a family-in-need-of-services case under § 9-27-338, because it was not in the child's best interest to return to the mother where the child was doing better while not in her custody; moreover, the father did not have to show a material change in circumstances since this was not a regular custody proceeding. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007), overruled in part, *Mahone v. Ark. Dep't of Human Servs.*, 2011 Ark. 370, 383 S.W.3d 854 (2011).

Family Services.

"Family services" may include ordering the Department of Human Services to pay to have water and electricity turned back on for the mother of a child in order to prevent a juvenile from being removed from the home. *Ark. Dep't of Human Servs. v. R.P.*, 333 Ark. 516, 970 S.W.2d 225 (1998).

Given that the trial court is empowered to order family services including cash assistance in family-in-need-of-services cases to prevent a juvenile from being removed from a parent, the General Assembly has specifically waived sovereign immunity as to the Department of Human Services in such instances. *Ark. Dep't of Human Servs. v. R.P.*, 333 Ark. 516, 970 S.W.2d 225 (1998).

Order requiring the Department of Health and Human Services to pay for an attorney for a child in its custody who had been accused of sexual misconduct was upheld pursuant to subdivisions (25)(A) and (B) (now (24)(A) and (B)) of this section; providing the child with an attorney, in order to keep the child off the sex offender list, would greatly assist in the child's adoption. *Ark. Dep't of Health & Human Servs. v. C.M.*, 100 Ark. App. 414, 269 S.W.3d 387 (2007).

Judicial Review.

Because any one of the allegations would have been sufficient to support a finding of dependency-neglect, the trial court's findings of neglect and parental unfitness did not need to be addressed. *Beeckman v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 192 (2015).

Jurisdiction.

Circuit court had jurisdiction to hear the case even though it concerned child-custody law and was outside the subject of proceedings in the juvenile division, because the designation of divisions was for the purpose of judicial administration and not for the purpose of subject-matter jurisdiction, and the creation of divisions would in no way limit the powers and duties of the judges to hear all matters within the jurisdiction of the circuit court; once the juvenile division of the circuit court ordered that the child be placed in the permanent custody of the third parties, the child was no longer dependent-neglected and she came into dependency-

neglect proceedings due to parental neglect and parental unfitness. *Young v. Ark. Dep't of Human Servs.*, 2012 Ark. 334 (2012).

Juvenile.

This section clearly defines a juvenile as an individual from birth to age eighteen; thus, the unborn fetus did not fall within the definition and, as a consequence, the lower court judge's order placing the fetus in the custody of the Department of Human Services and requiring that department to render prenatal care constituted a plain, manifest, clear, and gross abuse of discretion. *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003).

Juvenile was deprived of his right to counsel during a contempt proceeding, even though the juvenile had the services of an attorney ad litem, because the ad litem only represented the best interest of the juvenile, and not the juvenile's due process and other constitutional rights, as a defense attorney would. *Ark. Dep't of Human Servs. v. Mainard*, 358 Ark. 204, 188 S.W.3d 901 (2004).

Neglect.

Where the record reflected a dispute between the mother and the child's doctors about a proper psychological examiner and that, but for Department of Human Services intervention, treatment could have been delayed even more than it was, and the record also indicated that some of the doctors and social workers involved in this case were concerned that the mother would not allow the child to remain at a psychiatric facility for the duration of her treatment, the evidence of "neglect" under subdivisions (18) and (36) (now (17) and (37)) of this section was sufficient, even though it may have stemmed from parental motives which could not be characterized as neglectful in the sense of being intended to harm the child or not to care for her. *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

Where a mother demonstrated she was an unfit parent and indifferent to the needs of her children by failing to comply with the court's orders to get counseling and disassociate herself from an abusive man, the trial court's decision to terminate her parental rights was supported by

clear and convincing evidence; the evidence showed that her husband struck the older child across the face hard enough to leave marks, the mother's house was cold, filled with trash, and smelled like rotting food, and the mother was overheard calling to cancel a counseling session. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

The parent father was found to have neglected his teenagers under this section when he consented to the marriage of his 16-year-old daughter to a 34-year-old man from another state whom he barely knew. *Porter v. Ark. Dep't of Health & Human Servs.*, 374 Ark. 177, 286 S.W.3d 686 (2008).

In a case in which a mother appealed a circuit court's order adjudicating her daughter dependent-neglected, the crux of the mother's argument was that her mere suspicion of sexual abuse did not give rise to the statutory requirement for neglect that she knew or had reasonable cause to know of the sexual abuse by her daughter's stepfather; however, the circuit court found that she had suspicions that the abuse was occurring and not only failed to prevent it, but actually facilitated the abuse by leaving her daughter home alone with the stepfather. While the mother was not the person who sexually abused her daughter, the fact remained that her daughter was found to be at substantial risk of serious harm as a result of sexual abuse; thus her daughter was dependent-neglected. *Lipscomb v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 257 (2010).

Order for the Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. *Ark. Dep't of*

Human Servs. v. A.M., 2012 Ark. App. 240, 423 S.W.3d 86 (2012) (decided under former version of § 9-27-313(a)(1)(C)).

Evidence was sufficient to support the trial court's decision adjudicating appellant's children dependent-neglected, because they were in her care the day she was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Appellant's conduct constituted neglect and placed the children at risk of substantial harm. *Gaer v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 516 (2012).

Circuit court properly adjudicated a 15-year-old child as dependent-neglected by the grandmother, as her custodian, because the grandmother, who was responsible for her care, failed to properly supervise and investigate the putative father's home where the conditions were found to be unlivable, allowed the child to visit and stay there, and failed to provide adequate shelter for the child. *Tapp v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 216, 518 S.W.3d 725 (2017).

Trial court's order adjudicating two sons dependent-neglected was reversed where the court cited subdivisions (36)(A)(vii)(a) and (b) (now (37)(A)(vii)(a) and (b)) in its finding of neglect, but the finding that the mother was delusional and irrational did not support the conclusion that the children were ever "left alone". *Madore v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 296, 521 S.W.3d 172 (2017).

Circuit court's finding that a child was dependent-neglected was not clearly erroneous where the evidence showed that the putative father had punched the mother in the face while she was holding the child and yet the mother initially inquired about dropping the criminal charges against the putative father. The evidence that the child had been subjected to her parents' ongoing domestic abuse and had been placed in harm's way herself after having been previously injured showed that she was at substantial risk of serious harm as a result of neglect and parental unfitness. The mother's actions taken after the child was removed from her custody did not negate her failure to act to protect the child while she was in the mother's care. *Araujo v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 181, 574 S.W.3d 683 (2019).

Circuit court did not clearly err in adjudicating a child dependent-neglected because a preponderance of the evidence showed a mother undisputedly drove while intoxicated with the child in the car and was charged with a crime related to possession of a narcotic without a prescription, creating a dangerous situation and placing the child at substantial risk of serious harm, despite the mother's subsequent treatment plan compliance. *Reeves v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 72, 595 S.W.3d 401 (2020).

Trial court's adjudication of the daughter as dependent-neglected was upheld because the finding was based on parental unfitness and neglect and the mother focused only on the trial court's finding of neglect under Garrett's Law (subdivision (B)(1) of the definition of "Neglect" in this section); the mother did not challenge the trial court's finding that she was an unfit parent, and only one ground was necessary to support the adjudication of dependency-neglect. *Garner v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 328, 603 S.W.3d 858 (2020).

Parent.

Plain reading of this section means that a parent can be biological, or by adoption, or by a man who is married to a biological mother at the time of conception or by a man who has signed an acknowledgement of paternity, or by being found by a court of competent jurisdiction to be the biological father. *Howerton v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 560, 506 S.W.3d 872 (2016).

Although not initially included, appellant was added as a party and deemed by the circuit court to be the child's legal father because the child was conceived while appellant was married to the mother; the circuit court also deemed another man to be the child's legal father because he was listed on the birth certificate and was found to be the biological father through a paternity test. However, a review of case law from other jurisdictions showed a consensus that a child can have only one legal father and the Court of Appeals found those decisions to be persuasive. *Howerton v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 560, 506 S.W.3d 872 (2016).

Appellant could not be the child's legal father—presumptive or otherwise—once

the circuit court found that another man was the legal father. By finding another man to be the child's legal father, the circuit court effectively divested appellant of all parental rights. Thus, the circuit court's ruling terminating appellant's parental rights was clearly erroneous because he had no rights. *Howerton v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 560, 506 S.W.3d 872 (2016).

Although initially identified as a putative parent and a paternity test established that he was the father, nothing in the record showed that the father's legal status as a putative parent or biological parent was established to apply the 12-month time period described in § 9-27-341(b)(3)(B)(i)(b) or (b)(3)(B)(ii)(a), and therefore the circuit court erred in terminating his parental rights. This interpretation supported the goal of the juvenile system provided in § 9-27-302, which shall be liberally construed. *Earls v. Ark. Dep't of Human Servs.*, 2017 Ark. 171, 518 S.W.3d 81 (2017).

Plain reading of the definition of "parent" in this section means that a parent can be biological, or by adoption, or by a man who is married to a biological mother at the time of conception or by a man who has signed an acknowledgment of paternity, or by being found by a court of competent jurisdiction to be the biological father. *Earls v. Ark. Dep't of Human Servs.*, 2017 Ark. 171, 518 S.W.3d 81 (2017).

Department of Human Services did not fail to prove that the father was a parent of the child, given that DNA results showed that his probability of paternity was 99.99%, he was the putative father of the child at the time the child was taken into care, and he was ordered to receive services identical to those offered to the mother. *Johnson v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 221, 547 S.W.3d 489 (2018).

Trial court erred in terminating appellant's parental rights because there was no evidence that appellant's status as a "legal father" fell within the statutory definition of a parent for purposes of the aggravated-circumstances ground for termination. There was no evidence that appellant had been found by the court to be the biological father of the child; although the appellate court did have a finding by the trial court that appellant

was the "legal father" of the child, the appellate court could not ascertain on what basis that determination was made; and the trial court's orders frequently exchanged the terms "legal father" and "putative father" when referring to both appellant and another "father" identified in the case. *Tovias v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 228, 575 S.W.3d 621 (2019).

Where appellant argued only that DHS had not established that he was a "parent" and that DHS failed to offer sufficient proof that he was married to the mother when the child was born, the circuit court's decision terminating his parental rights was not clearly erroneous; the circuit court had found appellant to be the "non-custodial parent who was a legal parent" in the adjudication order and appellant did not appeal that order, a family-service worker testified at the termination hearing that from her understanding the child was born during the marriage, and appellant's attorney ad litem stated that she had recognized the "legal issue and those potential consequences" of a DNA test and that appellant had declined the test. *Thacker v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 379, 585 S.W.3d 698 (2019).

Putative Father.

Alleged father's right to his presumptive child should not have been terminated because, when the circuit court in effect voided a default paternity order and determined that the alleged father was not the biological father, all references and connections to the alleged father should have been removed from the case. The alleged father could not have been the presumptive legal father or even a putative father. *Wright v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 676, 449 S.W.3d 721 (2014).

Reasonable Efforts.

In a dependency-neglect case, an argument that services were not provided to prevent the removal of a child from the home was rejected because a finding was made in an ex parte order that the first contact by the department occurred during an emergency in which the child could not have remained safely at home, even with services provided. *Harris v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 508, 470 S.W.3d 316 (2015).

Trial court was not required to make specific findings under § 9-27-328 because it was an emergency situation in which reasonable efforts were not required and the mother's parental rights to her other children were terminated. *Samuels v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 2, 479 S.W.3d 596 (2016).

Reunification.

Where the court terminated a mother's parental rights to her oldest child after a two-year custody proceeding in which the mother demonstrated she was an unfit parent and indifferent to the needs of her children by failing to comply with the court's orders to get counseling and disassociate herself from an abusive man, the court also properly terminated her parental rights to her younger son who had only been in her custody for five months as there was little likelihood that continued services would result in reunification. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Termination of parental rights was proper where the circuit court's order found that the parents subjected their minor children to aggravating circumstances and noted that the mother's parental rights were terminated as to another child previously, the children were out of the home for more than twelve months, and the parents failed to remedy the circumstances causing their removal even after being provided with substantial reunification services. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Order terminating parents' rights to their three children was upheld where the parents subjected the children to aggravated circumstances, as provided in § 9-27-341(b)(3)(B)(ix)(a)(3), and the mother's deep-seated psychological problems prevented her from becoming a fit parent in that they caused her to refuse to accept responsibility for her actions; the trial court did not err in finding that there was little likelihood that services to the family would result in successful reunification. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

Parents' argument that the Department of Human Services failed to present clear and convincing evidence that it made reasonable efforts to rehabilitate the father was rejected because the department was

relieved of the burden to provide reunification services where the father was found to have subjected the daughter to sexual abuse, which was aggravated circumstances under § 9-27-341(b)(3)(B)(ix)(b). *Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006).

Trial court's finding that there was little likelihood that services would result in successful reunification was not clearly erroneous because the evidence indicated that the mother's twins were taken into custody by the Department of Human Services (DHS) because of newborn illegal substance exposure and had been in their grandmother's custody since they left DHS custody, the mother admitted she had used cannabis and cocaine continuously for nine months, and her examiner reported that the mother did not present with intellectual capacity to manage the independent care of her children. *Cole v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 395 (2014).

Sexual Abuse.

Adjudication of the mother's daughter as dependent-neglected was appropriate pursuant to this section because, although the child testified that her stepfather sexually abused her by putting his hand inside her underwear and by putting his fingers inside her body and that the abuse had gone on for some time, the mother testified that she did not think that the child was being truthful and that she did not believe that the stepfather posed any danger to the child in the home. Given that testimony, the appellate court was unable to say that the trial court's determination that the mother failed to protect her child was against the preponderance of the evidence. *Jackson v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 246, 374 S.W.3d 198 (2010).

Trial court properly terminated a mother's parental rights because there was no clear error in its finding that the mother subjected her children to aggravated circumstances; the mother failed to protect her children from the father's sexual abuse, and she admitted to knowingly engaging in sex acts in front of the children, which was sexual abuse under Arkansas law. *Geatches v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 344, 498 S.W.3d 326 (2016).

Trial court's adjudication of a father's daughters as dependent-neglected, based on allegations of the father's sexual abuse of one of the daughters, was not clearly erroneous or against the preponderance of the evidence because the court considered the hearsay statements of the daughter that were made to interviewers, which statements the court found to be sufficiently trustworthy, and the credible testimony from witnesses such as interviewers and a teacher. *Hambrick v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 458, 503 S.W.3d 134 (2016).

Cited: Ark. Dep't of Human Servs. v. Clark, 304 Ark. 403, 802 S.W.2d 461 (1991); *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991); *Valdez v. State*, 33 Ark. App. 94, 801 S.W.2d 659 (1991); *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993); *Boyd v. State*, 313

Ark. 171, 853 S.W.2d 263 (1993); *Briscoe v. State*, 323 Ark. 4, 912 S.W.2d 425 (1996); *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997); *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005); *Bayron v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 75, 388 S.W.3d 482 (2012); *Billingsley v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 348 (2015); *Matthews v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 359 (2015); *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 552, 473 S.W.3d 31 (2015); *Whitehead v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 42, 481 S.W.3d 469 (2016); *Ark. Dep't of Human Servs. v. Veasley*, 2016 Ark. App. 175 (2016); *Manohar v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 482, 528 S.W.3d 881 (2017); *McKinney v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 325, 551 S.W.3d 412 (2018).

9-27-304. Provisions supplemental.

(a) Unless this subchapter otherwise provides, nothing in this subchapter shall be construed to be in conflict with, to repeal, or to prevent proceedings under any act or statute of this state that may otherwise define any specific act of any person as a crime or misdemeanor, which act might also constitute contributing to the delinquency or dependency of a juvenile, or to prevent or to interfere with proceedings under any such acts.

(b) Nor shall this subchapter be construed to be inconsistent with or to repeal any act providing for the support by parents of their minor children, the taking of indecent liberties with, or selling liquor, tobacco, or firearms to children, or permitting them in prohibited places. Nothing in any such act or similar acts shall be construed to be inconsistent with or repeal this subchapter or prevent proceedings under this subchapter.

History. Acts 1989, No. 273, § 45.

9-27-305. Applicability.

Any juvenile within this state may be subjected to the care, custody, control, and jurisdiction of the circuit court.

History. Acts 1989, No. 273, § 4; 2003, No. 1166, § 3.

Cross References. Transition provi-

sions, tenure of present justices and judges, and jurisdiction of present courts, Ark. Const. Amend. 80, § 19.

CASE NOTES

Possession of Handgun.

Regardless of an adult's immunity from prosecution for the mere possession of a handgun, the General Assembly has clearly made the possession of a handgun a misdemeanor offense for juveniles; the juvenile court has jurisdiction of a juvenile

charged with possession of a handgun. *Lucas v. State*, 319 Ark. 752, 894 S.W.2d 891 (1995).

Cited: *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

9-27-306. Jurisdiction.

(a)(1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including without limitation:

(A)(i) Proceedings in which a juvenile is alleged to be delinquent as defined in this subchapter, including juveniles ten (10) to eighteen (18) years of age.

(ii) The court may retain jurisdiction of a juvenile delinquent up to twenty-one (21) years of age if the juvenile committed the delinquent act before reaching eighteen (18) years of age;

(B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years of age, except for the following:

(i)(a) A juvenile who has been adjudicated dependent or dependent-neglected before eighteen (18) years of age may request the court to continue jurisdiction over the juvenile until twenty-one (21) years of age so long as the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month toward gaining self-sufficiency.

(b) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment, or is working at least eighty (80) hours a month toward gaining self-sufficiency.

(c) The court shall discontinue jurisdiction only after a hearing to determine whether:

(1) The juvenile knowingly and voluntarily is requesting to leave care or the juvenile has failed to be engaged in or have a viable plan to participate in a course of instruction or treatment or is not working at least eighty (80) hours per month toward gaining self-sufficiency; and

(2) The Department of Human Services has fully complied with §§ 9-27-363 and 9-28-114; or

(ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction to receive independent living or transitional services if the juvenile:

(a) Was adjudicated dependent or dependent-neglected;

(b) Was in foster care at eighteen (18) years of age;

(c) Left foster care but desires to submit to the jurisdiction of the court before reaching twenty-one (21) years of age to benefit from independent living or transitional services; or

(d) Left foster care and decides to submit to the jurisdiction of the court and return to foster care to receive transitional services;

(C) Proceedings in which emergency custody or a seventy-two-hour hold has been taken on a juvenile under § 9-27-313 or the Child Maltreatment Act, § 12-18-101 et seq.;

(D) Proceedings in which a family is alleged to be in need of services as defined by this subchapter, which shall include juveniles from birth to eighteen (18) years of age, except for the following:

(i) A juvenile whose family has been adjudicated as a family in need of services and who is in foster care before eighteen (18) years of age may request that the court continue jurisdiction until twenty-one (21) years of age if the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month towards self-sufficiency to receive independent living or transitional services;

(ii) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment to receive independent living services; or

(iii) The court shall discontinue jurisdiction upon request of the juvenile or when the juvenile completes or is discontinued from the instruction or treatment to receive independent living services;

(E) Proceedings for termination of parental rights for a juvenile under this subchapter;

(F) Proceedings in which custody of a juvenile is transferred to the department;

(G) Proceedings for which a juvenile is alleged to be an extended juvenile jurisdiction offender under § 9-27-501 et seq.;

(H) Proceedings for which a juvenile is transferred to the juvenile division of circuit court from the criminal division of circuit court under § 9-27-318;

(I) Custodial placement proceedings filed by the department; and

(J) Proceedings in dependency-neglect or family in need of services matters to set aside an order of permanent custody upon the disruption of the placement.

(2) A juvenile shall not under any circumstance remain under the court's jurisdiction past twenty-one (21) years of age.

(3)(A) When the department exercises custody of a juvenile under the Child Maltreatment Act, § 12-18-101 et seq., files a petition for an ex parte emergency order, or files a petition for dependency-neglect concerning that juvenile, before or subsequent to the other legal proceeding, a party to that petition may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition.

(B) Upon the filing of a motion, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case.

(4) The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside the State of Arkansas.

(b) The assignment of cases to the juvenile division of the circuit court shall be as described by the Supreme Court in Administrative Order Number 14, originally issued April 6, 2001.

(c)(1) The circuit court shall have concurrent jurisdiction with the district court over juvenile curfew violations.

(2) For juvenile curfew violations, the prosecutor may file a family in need of services petition in circuit court or a citation in district court.

(d) The circuit court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state that are transferred to it under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(e) Regardless of funding, a juvenile will be allowed to return to foster care if evidence is presented to the circuit court that the department failed to comply with §§ 9-27-363 and 9-28-114 or if there is evidence that the juvenile was coerced by an employee or agent of the department to leave foster care.

(f) If a juvenile over eighteen (18) years of age who is allowed to reenter foster care fails to be engaged in or have a viable plan to participate in a course of instruction or treatment or is not working at least eighty (80) hours per month toward gaining self-sufficiency for more than sixty (60) days, the department may file a motion to discharge the juvenile from foster care.

History. Acts 1989, No. 273, § 5; 1993, No. 468, § 5; 1995, No. 533, § 1; 2001, No. 987, § 1; 2001, No. 1262, § 1; 2003, No. 1166, § 4; 2003, No. 1319, § 9; 2005, No. 1191, § 2; 2005, No. 1990, § 2; 2007, No. 257, § 1; 2009, No. 758, §§ 9, 10; 2009, No. 956, § 6; 2011, No. 792, §§ 6, 7; 2015, No. 875, § 1.

Amendments. The 2015 amendment substituted “before reaching” for “prior to” in (a)(1)(A)(ii); inserted “over the juvenile”

in (a)(1)(B)(i)(a); rewrote (a)(1)(B)(i)(c); substituted “before reaching” for “prior to” in (a)(1)(B)(ii)(c); deleted “if funding is available” at the end of (a)(1)(B)(ii)(d); in (a)(1)(D)(iii), substituted “discontinue” for “dismiss” and “discontinued” for “dismissed”; substituted “filing of a motion” for “motion’s being filed” in (a)(3)(B); added (e) and (f); and made stylistic changes.

RESEARCH REFERENCES

Ark. L. Rev. Note, Waiver and the Special Appearance in Arkansas: Arkansas Department of Human Services v. Farris, 47 Ark. L. Rev. 883.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Jerald A. Sharum, The Arkansas Supreme Court’s Unconstitutional Power Grab in Arkansas Department of Human Services v. Shelby and the Judiciary’s Authority in Child-Welfare Cases, 37 U. Ark. Little Rock L. Rev. 391 (2015).

CASE NOTES

ANALYSIS

Constitutionality.
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Constitutionality.

Former statute which provided that the judge of the juvenile court in each county could appoint a referee who had power to hear and pass on all juvenile cases of girls and of boys did not provide for the creation of a new court and thus did not violate Ark. Const., Art. 7 §§ 28 and 29. *Fortin v. Parrish* (In re Giurbino), 258 Ark. 277, 524 S.W.2d 236 (1975), overruled in part, *Hutton v. Savage*, 298 Ark. 256, 769 S.W.2d 394 (1989) (decision under prior law).

In General.

The Arkansas Juvenile Code of 1975 did not require that all juveniles, persons under 18 years of age, be charged and tried for criminal acts in juvenile court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

The enactment of the Arkansas Juvenile Code of 1975 in no way interfered with jurisdiction of the chancery court; the chancery courts retained general jurisdiction over the persons and the properties of minors. *Jones v. Jones*, 13 Ark. App. 102, 680 S.W.2d 118 (1984) (decision under prior law).

The juvenile court has exclusive jurisdiction over all of the offenses charged against a juvenile with the exception of those listed in § 9-27-318(b). *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991).

The jurisdiction of the juvenile court is exclusive and original with respect to all offenses charged against a juvenile who is

aged 14 years at the time of the commission of those offenses, with the exception of those offenses enumerated in § 9-27-318(b). *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

Construction.

The statutes of the juvenile court clearly support the conclusion that a direct transfer of a case is effected by a transfer order; the transfer of the case, viewed from the perspective of the transferor court, in the language of § 9-27-318(b)(2) ("transfer the case to juvenile court") (now see § 9-27-318(d)), is mirrored in the language of § 9-27-310(a), which provides, from the perspective of the transferee court, that proceedings in juvenile court "shall be commenced by filing a petition with the clerk of the chancery court or by transfer by another court." *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

Age of Juvenile.

Circuit court improperly held an extended juvenile jurisdiction review hearing and sentenced appellant, a juvenile when the crime of rape was committed, to an adult sentence because he had reached the age of 21 before the hearing was scheduled and conducted, and before the sentencing order was entered. Review hearing under § 9-27-507 had to be held prior to a juvenile turning 21. *Z.L. v. State*, 2015 Ark. 484, 478 S.W.3d 207 (2015).

Appealable Order.

Order which recited that the chancery court lacked personal jurisdiction and that any petition for termination of parental rights would have to be filed in another state decisively concluded the right to file for termination of parental rights in Arkansas and was, therefore, final and appealable. *Ark. Dep't of Human Servs. v. Farris*, 309 Ark. 575, 832 S.W.2d 482 (1992).

Central Registry.

The juvenile court does not have the statutory authority to order the removal of a name from the central registry of child maltreatment; the responsibility for the placement of names on the registry is vested in the Department of Human Ser-

vices, and the decision is subject to administrative review. Ark. Dep't of Human Servs. v. Thomas, 71 Ark. App. 348, 33 S.W.3d 514 (2000).

Collateral Attack.

The exercise of exclusive jurisdiction over juveniles is not a permissible function of the county courts under Ark. Const., Art. 7, §§ 1 and 28, but, since county courts have exercised jurisdiction over juveniles in the past under color of law, their proceedings and judgments may not be collaterally attacked. Walker v. Ark. Dep't of Human Servs., 291 Ark. 43, 722 S.W.2d 558 (1987) (decision under prior law).

Consolidated Proceedings.

Consolidation in juvenile court of divorce proceedings with custody proceedings involving several fathers and an allegation of dependency-neglect upheld to prevent conflicting custody orders within the same judicial district. Lowell v. Lowell, 55 Ark. App. 211, 934 S.W.2d 540 (1996).

Criminal Offenses.

Regardless of an adult's immunity from prosecution for the mere possession of a handgun, the General Assembly has clearly made the possession of a handgun a misdemeanor offense for juveniles; the juvenile court has jurisdiction of a juvenile charged with possession of a handgun. Lucas v. State, 319 Ark. 752, 894 S.W.2d 891 (1995).

Construing "minor in possession of a handgun" in violation of § 5-73-119(a)(1) in tandem with the grant of jurisdiction to juvenile court in subdivision (a)(1) of this section and the definition of "delinquent juvenile" in § 9-27-303, provides the juvenile court with jurisdiction of the handgun charge. Jones v. State, 319 Ark. 762, 894 S.W.2d 591 (1995).

Custody.

Where children had been abandoned by parents and temporarily placed by the juvenile court in the custody of the state social services agency, it was proper for custody dispute between social services and parents to be tried in the chancery court while the temporary custody of the children was tried in the juvenile court. Robins v. Ark. Soc. Servs., 273 Ark. 241, 617 S.W.2d 857 (1981), superseded by

statute as stated in, Nance v. Ark. Dep't of Human Servs., 316 Ark. 43, 870 S.W.2d 721 (1994) (decision under prior law).

Minors are wards of the chancery court, and it is the duty of those courts to make all orders that will properly safeguard their rights, including the awarding of their custody to persons other than natural parents, if circumstances warrant. Jones v. Jones, 13 Ark. App. 102, 680 S.W.2d 118 (1984) (decision under prior law).

Where father filed pleadings with the court seeking affirmative relief on the merits of the case concerning custody of children, and accepted counsel, who represented him in all phases of the proceedings, he could not complain that the court did not have personal jurisdiction over him for the subsequent purpose of terminating his parental rights. Ark. Dep't of Human Servs. v. Farris, 309 Ark. 575, 832 S.W.2d 482 (1992).

Exclusive Jurisdiction.

Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its exclusive jurisdiction to act to protect the integrity of the proceeding and to safeguard the rights of the litigants before it when it ordered DHS to correct problems that were preventing work and services. Ark. Dep't of Human Servs. v. Shelby, 2012 Ark. 54 (2012).

While the circuit court might have erred in allowing a prior, closed dependency-neglect case to be reopened, it had subject-matter jurisdiction to hear the petition and enter the termination order, the parents failed to raise any argument to the circuit court concerning the reopening of the closed dependency-neglect case, and any error in that regard on the part of the circuit court was waived and not preserved for appeal. Ward v. Ark. Dep't of Human Servs., 2015 Ark. App. 106 (2015).

Judgment.

Judgment of juvenile court must have recited all jurisdictional facts to be free from collateral attack. Jackson v. Roach, 176 Ark. 688, 3 S.W.2d 976 (1928) (decision under prior law).

Jurisdiction.

Circuit court, juvenile division, had subject-matter jurisdiction to hear the guard-

ianship proceeding, which arose out of dependency-neglect proceedings. While the circuit court might have erred in retaining jurisdiction in the absence of a formal request, a failure to follow statutory procedure does not oust the subject-matter jurisdiction of the court. Subdivision (a)(1)(B)(i) of this section contemplates that the circuit court's juvenile division may exercise jurisdiction over a juvenile up to 21 years of age; because the mother did not object to the irregularity in the proceedings below, her argument was not preserved. *Kantor v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 402, 559 S.W.3d 747 (2018).

Parties.

Where children had been temporarily abandoned by their parents, the state was the proper party plaintiff in its public guardianship capacity because an emergency situation involving children existed. *Robins v. Ark. Soc. Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981), superseded by statute as stated in, *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994) (decision under prior law).

Reopening of Case.

Arkansas Supreme Court held in *Young v. Ark. Dep't of Human Servs.*, 2012 Ark. 334, that the circuit court erred in reopening a two-year-closed dependency-neglect case to entertain a petition for modification of visitation, but the Court of Appeals does not interpret the opinion as forbidding the reopening of a closed dependency-neglect case in all circumstances, nor does the Court of Appeals discern that the Supreme Court offered a remedy for any alleged error in doing so. *Abram v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 437, 502 S.W.3d 563 (2016).

In this dependency-neglect case, decided on its own merits, occurring less than a month after the initial dependency-neglect case had been closed, and over which the circuit court clearly had subject-matter jurisdiction, the denial of the mother's motion to dismiss was not error; it was further noted that the mother did

not object to the case having been reopened until the end of the termination hearing, over a year after the alleged error occurred, and it should have been brought to the circuit court's attention. *Abram v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 437, 502 S.W.3d 563 (2016).

Transfer.

A probate court's failure to transfer an adoption case to the juvenile court would constitute reversible error had a party objected or brought it to the court's attention; however, the court was not acting without jurisdiction in hearing the matter. Appellant's failure to request a transfer of the case or otherwise question the propriety of the probate court hearing the case waived the issue. *In re D.J.M.*, 39 Ark. App. 116, 839 S.W.2d 535 (1992).

The circuit court's in personam jurisdiction of a juvenile, once surrendered pursuant to a valid hearing on the motion to transfer, may not be reconferred upon the transferor court simply by the state's unilateral action of there refileing its charges against that juvenile. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

What the prosecutor chooses to charge in the circuit court with respect to a juvenile is not necessarily determinative of the forum for trial; that decision rests with the circuit court. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

As the criminal division of the circuit court lost its exclusive jurisdiction over a juvenile's case when it transferred the case to the juvenile division pursuant to § 9-27-318, the criminal division lacked authority to later set aside its transfer order, and that order was a nullity. *C.H. v. State*, 2010 Ark. 279, 365 S.W.3d 879 (2010).

Cited: *Robinson v. Sutterfield*, 302 Ark. 7, 786 S.W.2d 572 (1990); *Juvenile H. v. Crabtree*, 310 Ark. 208, 833 S.W.2d 766 (1992); *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003); *Hays v. Ark. Dep't of Health & Human Servs.*, 2009 Ark. App. 864, 372 S.W.3d 830 (2009); *Williams v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 171, 458 S.W.3d 271 (2015).

9-27-307. Venue.

(a)(1)(A) Except as set forth in subdivisions (a)(2)-(4) of this section, a proceeding under this subchapter shall be commenced in the circuit court of the county in which the juvenile resides.

(B)(i) No dependency-neglect proceeding shall be dismissed if a proceeding is filed in the incorrect county.

(ii) If the proceeding is filed in the incorrect county, then the dependency-neglect proceeding shall be transferred to the proper county upon discovery of the proper county of residence of the juvenile.

(2) Proceedings may be commenced in the county where the alleged act or omission occurred in any of the following:

(A) Nonsupport after establishment of paternity;

(B) Delinquency; or

(C) Dependency-neglect.

(3) Proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., shall be commenced in the court provided by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(4) Adoptions and guardianships may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile.

(5) Juvenile proceedings shall comply with § 16-13-210, except detention hearings under § 9-27-326 and probable cause hearings under § 9-27-315.

(b)(1) Following adjudication, the court may on its own motion or on motion of any party transfer the case to the county of the juvenile's residence when the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., do not apply.

(2) The court shall not transfer any case to another judicial district prior to adjudication, excluding matters filed in the incorrect venue, or any case in which a petition to terminate parental rights has been filed unless the court has taken final action on the petition.

(c)(1) Prior to transferring a case to another venue, the court shall contact the judge in the other venue to confirm that the judge in the other venue will accept the transfer.

(2)(A) Upon confirmation that the judge will accept the transfer of venue, the transferring judge shall enter the transfer order. The transfer order shall:

(i) Indicate that the judge has accepted the transfer;

(ii) State the location of the court in the new venue; and

(iii) Set the time and date of the next hearing.

(B) The transfer order shall be:

(i) Provided to all parties and attorneys to the case; and

(ii) Transmitted immediately to the judge accepting the transfer.

(3) The transferring court shall also ensure that all court records are copied and sent to the judge in the new venue.

History. Acts 1989, No. 273, § 6; 1997, No. 1990, § 3; 2007, No. 587, § 10; 2009, No. 1084, § 1; 2001, No. 1503, § 2; 2003, No. 956, § 7.
No. 1319, § 10; 2003, No. 1809, § 1; 2005,

9-27-308. Personnel — Duties.**(a) INTAKE OFFICERS.**

(1) The judge or judges of the circuit court designated to hear juvenile cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, shall designate no fewer than one (1) person in his or her judicial district as intake officer for the court.

(2)(A) An intake officer shall have the following duties:

(i) To receive and investigate complaints and charges that a juvenile is delinquent or dependent-neglected, or that a family is in need of services;

(ii) To make appropriate referrals to other public or private agencies of the community if their assistance appears to be needed or desired; and

(iii) To perform all other functions assigned to him or her by this subchapter, by rules promulgated pursuant thereto, or by order of the court.

(B) Any of the foregoing functions may be performed in another state if authorized by a court of this state and permitted by the laws of the other state.

(3) If the intake officer has reasonable cause to suspect that a juvenile has been subjected to child maltreatment as defined in § 12-18-103, the intake officer shall immediately notify the central intake of the Department of Human Services.

(b) PROBATION OFFICERS.

(1) The judge or judges of the circuit court designated to hear juvenile cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, shall designate no fewer than one (1) person in his or her judicial district as probation officer.

(2) A probation officer shall have the following duties:

(A) To make appropriate investigations and reports when required to do so by any provision of this subchapter or the rules promulgated pursuant thereto or by order of the court;

(B) To aid and counsel juveniles and their families when required to do so by order of the court;

(C) To perform all other appropriate functions assigned to him or her by this subchapter or the rules promulgated pursuant thereto or by order of the court; and

(D) To give appropriate aid and assistance to the court when requested to do so by the judge.

History. Acts 1989, No. 273, § 7; 1995, No. 533, § 2; 2003, No. 1166, § 5; 2009, No. 758, § 11.

CASE NOTES

ANALYSIS

Funding.

Immunity of Intake Officers.

Funding.

Where circuit and chancery judge issued an order setting the salaries of the judicial district's probation officer and intake officer at \$18,000.00 per year, and petitioners, members of the county quorum court, voted to pay county's share of the salary, but at the rate of only \$15,000.00 per year, petitioners did not fail to fund the court, there was no showing that level of funding was so low that the court could not effectively operate and the inherent authority doctrine did not apply. *Abbott v. Spencer*, 302 Ark. 396, 790 S.W.2d 171 (1990).

Immunity of Intake Officers.

All actions taken by a social worker are not entitled to absolute immunity. If a

social worker unilaterally attempts to influence the parent-child relationship, these actions would fall outside the protected prosecutorial role; in such a case, a lawsuit could proceed against the social worker, and the social worker would only be entitled to assert the defense of qualified immunity. *Fogle v. Benton County SCAN*, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

Actions of supervisor for Arkansas Social Services in the initiation and investigation of a petition to remove child from person's custody due to a suspicion of child abuse were not outside supervisor's quasi-prosecutorial role as an advocate and were thus protected by absolute prosecutorial immunity, and a contention that supervisor's actions were motivated by malicious intent did not remove the protection afforded by absolute prosecutorial immunity. *Fogle v. Benton County SCAN*, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

9-27-309. Confidentiality of records — Definition.

(a) All records may be closed and confidential within the discretion of the circuit court, except:

(1) Adoption records, including any part of a dependency-neglect record that includes adoption records, shall be closed and confidential as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(2) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult or to determine if the juvenile should be tried as an adult; and

(3) The Administrative Office of the Courts shall provide the Arkansas Crime Information Center with records of delinquency adjudications for a juvenile adjudicated delinquent for an offense for which juvenile fingerprints shall be taken under § 9-27-320.

(b)(1)(A) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be kept for ten (10) years after the last adjudication of delinquency or the date of a plea of guilty or nolo contendere or a finding of guilt as an adult.

(B) Thereafter they may be expunged.

(2) The court may expunge other juvenile records at any time and shall expunge all the records of a juvenile upon his or her twenty-first birthday, in other types of delinquency, dependency-neglect, or families in need of services cases.

(3) For purposes of this section, "expunge" means to destroy.

(c) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult or until the juvenile's twenty-first birthday, whichever is longer.

(d)(1) If an adult criminal sentence is imposed on an extended juvenile jurisdiction offender, the record of that case shall be considered an adult criminal record.

(2)(A) The court shall enter an order transferring the juvenile record to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal docket number and shall maintain the file as if the case had originated as a criminal case.

(e) This section does not apply to nor restrict the use or publication of statistics, data, or other materials that summarize or refer to any records, reports, statements, notes, or other information in the aggregate and that do not refer to or disclose the identity of any juvenile defendant in any proceeding when used only for the purpose of research and study.

(f) This subchapter does not preclude prosecuting attorneys or the court from providing information, upon written request, concerning the disposition of a juvenile who has been adjudicated delinquent to:

(1) The victim or his or her next of kin; or

(2) The school superintendent of the school district or the designee of the school superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(g) The prosecuting attorney shall notify the school superintendent or the designee of the school superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services if the juvenile is adjudicated delinquent for:

(1) An offense for which the juvenile could have been charged as an adult;

(2) An offense involving a deadly weapon under § 5-1-102;

(3) Kidnapping under § 5-11-102;

(4) Battery in the first degree under § 5-13-201;

(5) Sexual indecency with a child under § 5-14-110;

(6) First, second, third, or fourth degree sexual assault under §§ 5-14-124 — 5-14-127; or

(7) The unlawful possession of a handgun under § 5-73-119.

(h) Information provided pursuant to subsections (f) and (g) of this section shall not be released in violation of any state or federal law protecting the privacy of the juvenile.

(i)(1) If a juvenile is arrested for unlawful possession of a firearm under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or battery in the first degree under § 5-13-201, the arresting agency shall orally notify the superintendent or the designee of the superintendent of the school district to which the juvenile transfers, in

which the juvenile is enrolled, or from which the juvenile receives services of the offense for which the juvenile was arrested or detained within twenty-four (24) hours of the arrest or detention or before the next school day, whichever is earlier.

(2)(A) The superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services shall then immediately notify:

- (i) The principal of the school;
- (ii) The resource officer of the school; and
- (iii) Any other school official with a legitimate educational interest in the juvenile.

(B) The arrest information shall:

- (i) Be treated as confidential information; and
- (ii) Not be disclosed by the superintendent or the designee of the superintendent to any person other than a person listed in subdivision (i)(2)(A) of this section.

(C) A person listed in subdivision (i)(2)(A) of this section who is notified of the arrest or detention of a juvenile by the superintendent or the designee of the superintendent shall maintain the confidentiality of the information he or she receives.

(3) The arrest information shall be used by the school only for the limited purpose of obtaining services for the juvenile or to ensure school safety.

(j) Records of the arrest of a juvenile, the detention of a juvenile, proceedings under this subchapter, and the records of an investigation that is conducted when the alleged offender is an adult and relates to an offense that occurred when the alleged offender was a juvenile shall be confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unless:

(1) Authorized by a written order of the juvenile division of circuit court;

(2) The arrest or the proceedings under this subchapter result in the juvenile's being formally charged in the criminal division of circuit court for a felony; or

(3) As allowed under this section or § 9-27-320.

(k) Information regarding the arrest or detention of a juvenile and related proceedings under this subchapter shall be confidential unless the exchange of information is:

(1) For the purpose of obtaining services for the juvenile, to ensure school safety, or to ensure public safety;

(2) Reasonably necessary to achieve one (1) or more purposes; and

(3) Under a written order by the circuit court.

(l)(1) The information may be given only to the following persons:

- (A) A school counselor;
- (B) A juvenile court probation officer or caseworker;
- (C) A law enforcement officer;
- (D) A spiritual representative designated by the juvenile or his or her parents or legal guardian;

(E) A Department of Human Services caseworker;

(F) A community-based provider designated by the court, the school, or the parent or legal guardian of the juvenile;

(G) A Department of Health representative;

(H) The juvenile's attorney ad litem or other court-appointed special advocate; or

(I)(i) A school superintendent or the designee of the superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(ii) A school superintendent or the designee of the superintendent of the school district in which the juvenile is enrolled or from which the juvenile receives services shall immediately notify the following persons of information he or she obtains under subsection (k) of this section:

(a) The principal of the school;

(b) The resource officer of the school; and

(c) Any other school official with a legitimate educational interest in the juvenile.

(2) The persons listed in subdivision (l)(1) of this section may meet to exchange information, to discuss options for assistance to the juvenile, to develop and implement a plan of action to assist the juvenile, to ensure school safety, and to ensure public safety.

(3) The juvenile and his or her parent or legal guardian shall be notified within a reasonable time before a meeting and may attend any meeting of the persons referred to in subdivision (l)(1) of this section when three (3) or more individuals meet to discuss assistance for the juvenile or protection of the public due to the juvenile's behavior.

(4) Medical records, psychiatric records, psychological records, and related information shall remain confidential unless the juvenile's parent or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (l)(1) of this section and the purpose for the disclosure.

(5) Persons listed in subdivision (l)(1) of this section who exchange any information referred to in this section may be held civilly liable for disclosure of the information if the person does not comply with limitations set forth in this section.

(m)(1) When a court orders that a juvenile have a safety plan that restricts or requires supervised contact with another juvenile or juveniles as it relates to student or school safety, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student or school safety be provided to the school superintendent and principal of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(2) When a court order amends or removes any safety plan outlined in subdivision (m)(1) of this section, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan, as it relates to student or school safety, be provided to the school

superintendent and principal of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(3)(A) The superintendent or principal of the school district in which the juvenile is enrolled or from which the juvenile receives services shall provide verbal notification only to school officials who are necessary to implement the safety plan as ordered by the court to ensure student safety.

(B) This verbal notification may only be provided to assistant principals, counselors, resource officers, and the school employees who are primarily responsible for the supervision of the juvenile or responsible for the learning environment of the juvenile in the school district in which the juvenile is enrolled or from which the juvenile receives services, and to bus drivers, if applicable.

(4) Any school officials that receive a court order and safety plan or information concerning the court order and safety plan shall:

(A) Keep the information confidential and shall sign a statement not to disclose the information concerning the court order and safety plan that shall be kept by the superintendent or principal along with the court order and safety plan;

(B) Keep the information confidential and shall not disclose the information to any person not listed in subdivision (1)(1) of this section;

(C) Include the information in the juvenile's permanent educational records; and

(D)(i) Treat the information and documentation contained in the court order as education records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(ii) A school official shall not release, disclose, or make available the information and documentation contained in the court order for inspection to any party except as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(iii) However, the local education agency shall not under any circumstance release, disclose, or make available for inspection to the public, any college, university, institution of higher education, vocational or trade school, or any past, present, or future employer of the student the court order or safety plan portion of a student record.

(5) When a student attains an age that he or she is no longer under the jurisdiction of the juvenile division of circuit court, the safety plan and the order regarding the safety plan shall be removed from the juvenile's permanent records at the local education agency and destroyed.

History. Acts 1989, No. 273, § 8; 1993, No. 535, § 3; 1993, No. 551, § 3; 1993, No. 758, § 4; 1994 (2nd Ex. Sess.), No. 69, § 1; 1994 (2nd Ex. Sess.), No. 70, § 1; 1999, No. 1192, § 13; 1999, No. 1451, § 1; 2001, No. 1268, § 1; 2003, No. 1166, § 6; 2009,

No. 956, § 8; 2015, No. 1016, §§ 1, 2; 2017, No. 891, § 1; 2019, No. 647, §§ 2-5.

A.C.R.C. Notes. Pursuant to § 1-2-207, subsection (a) of this section is set out above as amended by Acts 1993, No. 758. Subsection (a) of this section was also

amended by identical acts Nos. 535 and 551, § 3, to read as follows: "All records may be closed and confidential within the discretion of the court except records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult."

Act 2015, No. 1016, § 2 has been enacted twice within Act 2015, No. 1016 concerning §§ 9-27-309(j) and § 9-27-320.

Amendments. The 2015 amendment rewrote (a)(3); and added (j)(3).

The 2017 amendment substituted "proceedings under this subchapter, and the

records of an investigation that is conducted when the alleged offender is an adult and relates to an offense that occurred when the alleged offender was a juvenile" for "and the proceedings under this subchapter" in the introductory language of (j).

The 2019 amendment rewrote (f)(2), (g), and (i)(1) and (i)(2); inserted "to ensure school safety" in (k)(1) and (l)(2); substituted "more" for "both" in (k)(2); added (l)(1)(I); rewrote (m)(1) through (m)(3); and made stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

CASE NOTES

ANALYSIS

Applicability.

Release of Mental Evaluation Inappropriate.

State Access.

Applicability.

Where the appellant was adjudicated delinquent of an offense for which he could have been charged as an adult, the specific expungement provisions contained in this section controlled over the more general provisions for expungement of criminal records found in § 16-90-901 [repealed, now see § 16-90-1401 et seq.] and the statutes enumerated therein. *L.H. v. State*, 333 Ark. 613, 973 S.W.2d 477 (1998).

Subsection (k) of this section did not apply because the victim's sister testified about her own personal experience and did not present evidence regarding the arrest or detention of a juvenile and related proceedings; in fact, there was no reference at all to the prior juvenile proceedings during the State's case and thus, the trial court did not err in admitting the sister's testimony and denying the motion to transfer the case to juvenile court. *Gilham v. State*, 2016 Ark. App. 434, 502 S.W.3d 558 (2016).

Release of Mental Evaluation Inappropriate.

Defendant's convictions for capital murder and kidnapping were appropriate because he did not dispute a witness' status as a juvenile and it was therefore clear that former section precluded the release of that witness' mental evaluation. Defendant also presented no evidence showing that the witness was subject to insane delusions or that her ability to perceive and remember was impaired; thus, the circuit court's competency ruling was not an abuse of discretion. *Gilcrease v. State*, 2009 Ark. 298, 318 S.W.3d 70 (2009) (decided under former § 9-27-352).

State Access.

Items were not inadmissible simply because they came from defendant's juvenile court file; subsection (a) of this section gives the juvenile court discretion to open files for the State. *Echols v. State*, 326 Ark. 917, 936 S.W.2d 509 (1996), cert. denied, 520 U.S. 1244, 117 S. Ct. 1853, 137 L. Ed. 2d 1055 (1997).

Cited: *Juvenile H. v. Crabtree*, 310 Ark. 212, 833 S.W.2d 766 (1992); *C.L. v. State*, 2012 Ark. App. 374 (2012); *Duggar v. City of Springdale*, 2020 Ark. App. 220, 599 S.W.3d 672 (2020).

9-27-310. Commencement of proceedings.

(a) Proceedings shall be commenced by filing a petition with the circuit clerk of the circuit court or by transfer by another court.

(b)(1) The prosecuting attorney shall have sole authority to file a delinquency petition or petition for revocation of probation.

(2) Only a law enforcement officer, prosecuting attorney, the Department of Human Services or its designee, or a dependency-neglect attorney ad litem employed by or contracting with the Administrative Office of the Courts may file a dependency-neglect petition seeking ex parte emergency relief.

(3) Petitions for dependency-neglect or family in need of services may be filed by:

(A) Any adult; or

(B) Any member ten (10) years of age or older of the immediate family alleged to be in need of services.

(4) Petitions for paternity establishment may be filed by:

(A) The biological mother;

(B) A putative father;

(C) A juvenile; or

(D) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(c) Concurrent with filing, a copy of any petition that requests that the Department of Human Services take custody or provide family services shall be mailed to the Secretary of the Department of Human Services and to the attorney of the local Office of Chief Counsel of the Department of Human Services by the petitioner.

(d)(1) A person may submit to the intake officer for investigation a complaint of acts or omissions that if substantiated would constitute delinquency.

(2) Upon substantiation, the intake officer may refer the matter to the prosecuting attorney or an appropriate agency.

(e) No fees, including, but not limited to, fees for filings, copying, or faxing, including petitions for adoption, petitions for guardianships, summons, or subpoenas shall be charged or collected by the circuit clerk or sheriff's office in cases brought in the circuit court under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Human Services.

(f) If the circuit clerk's office has a fax machine, the circuit clerk, in cases commenced in the circuit court under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Human Services shall accept facsimile transmissions of any papers filed under this subchapter as described in Rule 5 of the Arkansas Rules of Civil Procedure.

(g) An attorney ad litem appointed under § 12-18-1001(e) shall review all relevant information from the juvenile proceeding regarding

the child or children for whom protective custody was taken and shall file any pleadings that may be necessary to protect the health, safety, or welfare of the child or children.

History. Acts 1989, No. 273, § 9; 1989 (3rd Ex. Sess.), No. 34, § 1; 1995, No. 533, § 3; 1995, No. 1184, § 18; 1999, No. 1340, §§ 8, 9; 2001, No. 1503, § 3; 2003, No. 1166, § 7; 2005, No. 1990, § 4; 2015, No. 1017, §§ 1, 2; 2019, No. 910, § 5131.

A.C.R.C. Notes. Pursuant to § 1-2-207, subsection (b) of this section is set out above as amended by Acts 1995, No. 1184, § 18. Subsection (b) of this section was also amended by Acts 1995, No. 533, § 3 to read as follows:

“(b)(1) The prosecuting attorney shall have sole authority to file a delinquency petition or petition for revocation of probation.

“(2) Only a law enforcement officer, prosecuting attorney, the Department of Human Services or its designee may file a dependency-neglect petition seeking expedient emergency relief.

“(3) Petitions for dependency-neglect or family in need of services may be filed by:

“(A) Any adult; or

“(B) Any member ten (10) years or older of the immediate family alleged to be in need of services.

“(4) Petitions for paternity establishment may be filed by:

“(A) The biological mother;

“(B) A putative father;

“(C) A juvenile; or

“(D) The Department of Human Services or the Office of Child Support Enforcement (OCSE).”

Amendments. The 2015 amendment inserted “or a dependency-neglect attorney ad litem employed by or contracting with the Administrative Office of the Courts” in (b)(2); and added (g).

The 2019 amendment substituted “Secretary of the Department of Human Services” for “Director of the Department of Human Services” in (c).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Note, Civil Procedure — Arkansas Rule of Civil Procedure 53(b) — An End to the Use of

Special Referees in Arkansas, 12 U. Ark. Little Rock L.J. 577.

CASE NOTES

ANALYSIS

Construction.
Discretion of Prosecutor.
Jurisdiction.

Construction.

The statutes of the juvenile court clearly support the conclusion that a direct transfer of a case is effected by a transfer order; the transfer of the case, viewed from the perspective of the transferor court, in the language of § 9-27-318(b)(2) (“transfer the case to juvenile court”) (now see § 9-27-318(d)), is mirrored in the language of subsection (a) of this section, which provides, from the perspective of the transferee court, that proceedings in juvenile court “shall be commenced by filing a petition with the clerk of the chancery court or by transfer by

another court.” Webb v. State, 318 Ark. 581, 886 S.W.2d 624 (1994).

Discretion of Prosecutor.

This subchapter provides that, when a case involves a juvenile 16 years of age or older, and the alleged act would constitute a felony if committed by an adult, the prosecuting attorney has the discretion to file a petition in juvenile court alleging delinquency, or to file charges in circuit court and to prosecute as an adult. State v. Pulaski County Circuit-Chancery Court, 316 Ark. 473, 872 S.W.2d 854 (1994).

Jurisdiction.

Trial court, not the juvenile court, had jurisdiction and the mere detention of defendant in a juvenile facility did not give the juvenile court jurisdiction; because no juvenile proceedings had commenced against defendant, the trial court

acquired jurisdiction over the criminal proceedings initiated against him upon the filing of the information charging him as an adult. *Morgan v. Norris*, 355 Ark. 678, 144 S.W.3d 243 (2004).

Farris, 309 Ark. 575, 832 S.W.2d 482 (1992); *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Lowell v. Lowell*, 55 Ark. App. 211, 934 S.W.2d 540 (1996).

Cited: Ark. Dep't of Human Servs. v.

9-27-311. Required contents of petition.

(a) The petition shall set forth the following:

(1)(A) The name, address, gender, Social Security number, and date of birth of each juvenile subject of the petition.

(B) A single petition for dependency-neglect or family in need of services shall be filed that includes all siblings who are subjects of the petition;

(2) The name and address of each of the parents or the surviving parent of the juvenile or juveniles;

(3) The name and address of the person, agency, or institution having custody of the juvenile or juveniles;

(4) The name and address of any other person, agency, or institution having a claim to custody or guardianship of the juvenile or juveniles;

(5) In a proceeding to establish paternity, the name and address of both the putative father and the presumed legal father, if any;

(6) In a dependency-neglect proceeding, the name and address of a putative parent, if any; and

(7) In a dependency-neglect proceeding:

(A) The name, address, gender, and date of birth of any sibling of a juvenile named as respondent to the petition; and

(B) The name of each parent, guardian, or custodian of a sibling of a juvenile named as respondent to the petition.

(b) If the name or address of anyone listed in subsection (a) of this section is unknown or cannot be ascertained by the petitioner with reasonable diligence, this shall be alleged in the petition and the petition shall not be dismissed for insufficiency, but the court shall direct appropriate measures to find and give notice to the persons.

(c)(1) All persons named in subdivisions (a)(1)-(3) of this section shall be made defendants and served as required by this subchapter.

(2) However:

(A) In dependency-neglect petitions, the juvenile shall have party status and be named in the petition as a respondent and shall be served notice under § 9-27-312;

(B) Unless otherwise provided under subdivision (d)(2)(A) of this section, in a dependency-neglect and termination of parental rights petition, the putative parent shall not be a party unless the circuit court determines that the putative parent:

(i) Has established paternity and the circuit court enters an order establishing the putative parent as the parent for the purposes of this subchapter and directs that the parent be added to the case as a party defendant; or

(ii) Has established significant contacts with the juvenile and the circuit court enters an order that putative parent rights have attached and the putative parent shall be added to the case as a party defendant; and

(C) In a paternity action, the petitioner shall name as defendants only the mother, the putative father, or the presumed legal father, if any.

(d)(1)(A) The Department of Human Services shall make diligent efforts to identify putative parents in a dependency-neglect proceeding.

(B) Diligent efforts shall include without limitation checking the Putative Father Registry.

(2)(A)(i) A petitioner may name and serve a putative parent as a party under § 9-27-312 to resolve the party status and rights under § 9-27-325 or terminate the rights of the putative parent under § 9-27-341.

(ii) If the petitioner does not name and serve a putative parent as a party in accordance with subdivision (d)(2)(A)(i) of this section, the petitioner shall provide a putative parent with notice under Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding as soon as the putative parent is identified.

(B) The notice shall include information about:

(i) The method of establishing paternity;

(ii) The right of the putative parent to prove significant contacts; and

(iii) The right of the putative parent to be heard by the court.

(C) The petitioner shall provide the notice to the court and the parties to the case.

(e)(1) The petition shall set forth the following in plain and concise words:

(A) The facts that, if proven, would bring the family or juvenile within the court's jurisdiction;

(B) The section of this subchapter upon which jurisdiction for the petition is based;

(C) The relief requested by the petitioner; and

(D) If a petition for delinquency proceedings, any and all sections of the criminal laws allegedly violated.

(2)(A) The petition shall be supported by an affidavit of facts.

(B) A supporting affidavit of facts shall not be required for delinquency, paternity, or termination of parental rights petitions.

(C) The supporting affidavit of facts shall include known information regarding the fitness of the noncustodial parent to be considered for custody, placement, or visitation with the juvenile.

(D) If the petition for dependency-neglect is filed by the department, the supporting affidavit of facts shall include a list of all contact the department has had with the family before the filing of the petition, including without limitation hotline calls accepted for maltreatment, investigations, and open cases.

History. Acts 1989, No. 273, § 10; 1989 (3rd Ex. Sess.), No. 34, § 2; 1995, No. 1184, § 19; 1997, No. 1085, § 1; 1997, No. 1227, § 2; 1999, No. 1340, §§ 10, 11; 2011, No. 1175, § 2; 2015, No. 1017, §§ 3-5; 2015, No. 1022, § 1; 2019, No. 541, §§ 1, 2.

Amendments. The 2015 amendment by No. 1017 added (a)(7); rewrote (c)(2)(B) [now (c)(2)(A)]; and added (d)(2)(C) and (D) [now (e)(2)(C) and (D)].

The 2015 amendment by No. 1022 deleted “and subdivision (a)(6) of this section” preceding “shall” in (c)(1); deleted

former (c)(2)(A); redesignated former (c)(2)(B) as (c)(2)(A); inserted present (c)(2)(B) and (C); inserted (d); and redesignated former (d) as (e).

The 2019 amendment, in the introductory language of (c)(2)(B), added “Unless otherwise provided under subdivision (d)(2)(A) of this section” and deleted “named as” preceding “a party”; substituted “as the parent for the purposes of this subchapter” for “as the legal parent” in (c)(2)(B)(i); rewrote (d)(2)(A); and substituted “petitioner” for “department” in (d)(2)(C).

CASE NOTES

ANALYSIS

In General.
Defendants.
Discharge from Hospital.

In General.

No less than 72 hours prior to an adjudicatory hearing, the juvenile and his parents or guardian were to be personally served with a written copy of a petition or other notice which included the following information in addition to that which was required by former statute: (1) whether the child is being charged as a delinquent, a juvenile in need of supervision, or as a dependent-neglected child; (2) if a child is charged with delinquency by virtue of having violated a criminal statute, the date and place the alleged acts constituting delinquency occurred, as well as a description of the alleged acts and the names of all persons allegedly involved; (3) the names and addresses of all known witnesses to the alleged acts constituting delinquency; and (4) that the child has the right to compel the attendance of witnesses at the hearing through subpoena. *Thomas v. Mears*, 474 F. Supp. 908 (E.D. Ark. 1979) (decision under prior law).

Defendants.

The putative father of the children at issue was a defendant and, therefore, had standing to contest the dependency/neglect proceeding, notwithstanding that he was not a legal custodian or a legal guardian of the children. *Jorden v. Ark. Dep’t of Human Servs.*, 73 Ark. App. 1, 38 S.W.3d 914 (2001).

Where the Department of Human Services did not make appellant a party to the dependency proceeding for two years despite knowing his putative fatherhood and terminated his parental rights without creating a case plan for him or providing family services, the dictates of this section and § 9-27-312 were not met and he was denied basic due process guarantees. *Tuck v. Ark. Dep’t of Human Servs.*, 103 Ark. App. 263, 288 S.W.3d 665 (2008).

Discharge from Hospital.

Discharge of infant from hospital did not violate any affirmative duty under former statute. *Harpole v. Ark. Dep’t of Human Servs.*, 820 F.2d 923 (8th Cir. 1987) (decision under prior law).

Cited: *Johnson v. Ark. Dep’t of Human Servs.*, 2012 Ark. App. 244, 413 S.W.3d 549 (2012).

9-27-312. Notification to defendants.

(a) In a delinquency and family-in-need-of-services case, a juvenile defendant ten (10) years of age and above, any persons having care and control of the juveniles, and all adult defendants shall be served with a copy of the petition and either a notice of hearing or order to appear in the manner provided by the Arkansas Rules of Civil Procedure.

(b) In a dependent-neglected case:

(1) A juvenile respondent shall be served with a copy of the petition and all other pleadings by serving the juvenile's attorney ad litem in accordance with Rule 5 of the Arkansas Rules of Civil Procedure; and

(2) Each adult defendant shall be served in the manner provided in the Arkansas Rules of Civil Procedure with a copy of the petition and either a notice of a hearing or an order to appear.

History. Acts 1989, No. 273, § 11; 2015, No. 825, § 1.

Amendments. The 2015 amendment designated the existing language as (a);

substituted "In a delinquency and family in need of services case, a juvenile defendant" for "All juvenile defendants" in (a); and added (b).

CASE NOTES

Noncompliance.

Where the Department of Human Services did not make appellant a party to the dependency proceeding for two years despite knowing his putative fatherhood and terminated his parental rights without creating a case plan for him or provid-

ing family services, the dictates of § 9-27-311 and this section were not met and he was denied basic due process guarantees. *Tuck v. Ark. Dep't of Human Servs.*, 103 Ark. App. 263, 288 S.W.3d 665 (2008).

Cited: *T.S.B. v. Robinson*, 2019 Ark. App. 359, 586 S.W.3d 650 (2019).

9-27-313. Taking into custody.

(a)(1) A juvenile only may be taken into custody without a warrant before service upon him or her of a petition and notice of hearing or order to appear as set out under § 9-27-312:

(A) Pursuant to an order of the circuit court under this subchapter;

(B) By a law enforcement officer without a warrant under circumstances as set forth in Rule 4.1 of the Arkansas Rules of Criminal Procedure; or

(C) By a designated person under § 12-18-1001 et seq.

(2) When any juvenile is taken into custody without a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(b)(1) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the judge of the division of circuit court out of which the warrant was issued and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(2) The judge shall decide whether the juvenile should be tried as a delinquent or a criminal defendant pursuant to § 9-27-318.

(c) When a juvenile is taken into protective custody under § 12-18-1001, the person exercising protective custody shall:

(1)(A) Notify the Department of Human Services and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(B) The notification to the custodial parent, noncustodial parent, guardian, or custodian of the juvenile shall be in writing and shall include a notice:

- (i) That the juvenile has been taken into foster care;
- (ii) Of the name, location, and phone number of the person at the department whom the custodial parent, noncustodial parent, guardian, or custodian of the juvenile can contact about the juvenile;
- (iii) Of the rights of the juvenile and the rights of the custodial parent, noncustodial parent, guardian, or custodian of the juvenile to receive a copy of any petition filed under this subchapter;
- (iv) Of the location and telephone number of the court; and
- (v) Of the procedure for obtaining a hearing; or

(2) Return the juvenile to his or her home.

(d)(1)(A) A law enforcement officer shall take a juvenile to detention, immediately make every effort to notify the custodial parent, guardian, or custodian of the juvenile's location, and notify the juvenile intake officer within twenty-four (24) hours so that a petition may be filed if a juvenile is taken into custody for:

- (i) Unlawful possession of a handgun, § 5-73-119(a)(1);
- (ii) Possession of a handgun on school property, § 5-73-119(b)(1);
- (iii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- (iv) Any felony committed while armed with a firearm; or
- (v) Criminal use of prohibited weapons, § 5-73-104.

(B) The authority of a juvenile intake officer to make a detention decision pursuant to § 9-27-322 shall not apply when a juvenile is detained pursuant to subdivision (d)(1)(A) of this section.

(C) A detention hearing shall be held by the court pursuant to § 9-27-326 within seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day.

(2) If a juvenile is taken into custody for an act that would be a felony if committed by an adult, other than a felony listed in subdivision (d)(1)(A) of this section, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A)(i) Take the juvenile to detention.

(ii) The intake officer shall be notified immediately to make a detention decision pursuant to § 9-27-322 within twenty-four (24) hours of the time the juvenile was first taken into custody, and the prosecuting attorney shall be notified within twenty-four (24) hours.

(iii) If the juvenile remains in detention, a detention hearing shall be held no later than seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the court and release the juvenile and within twenty-four (24) hours notify the juvenile intake officer and the prosecuting attorney so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(3) If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A) Notify the juvenile intake officer, who shall make a detention decision pursuant to § 9-27-322;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the circuit court and release the juvenile and notify the juvenile intake officer and the prosecuting attorney within twenty-four (24) hours so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(4)(A) In all instances when a juvenile may be detained, the juvenile may be held in a juvenile detention facility or a seventy-two-hour holdover if a bed is available in the facility or holdover.

(B) If not, an adult jail or lock-up may be used, as provided by § 9-27-336.

(5) In all instances when a juvenile may be detained, the intake officer shall immediately make every effort possible to notify the juvenile's custodial parent, guardian, or custodian.

(e) When a law enforcement officer takes custody of a juvenile under this subchapter for reasons other than those specified in subsection (c) of this section concerning dependent-neglected juveniles or subsection (d) of this section concerning delinquency, he or she shall:

(1)(A)(i) Take the juvenile to shelter care, notify the department and the intake officer of the court, and immediately make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location.

(ii) The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter, of the location and telephone number of the court, and of the procedure for obtaining a hearing.

(B)(i) In cases when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or lives out of state and the juvenile has been absent from his or her home or domicile for more than twenty-four (24) hours, the juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(iii) A juvenile held under this subdivision (e)(1)(B) must be separated from detained juveniles charged or held for delinquency.

(iv) A juvenile may not be held under this subdivision (e)(1)(B) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding

weekends and holidays, if the parent, guardian, or other person contacted lives out of state; or

(2) Return the juvenile to his or her home.

(f) If no delinquency petition to adjudicate a juvenile taken into custody is filed within twenty-four (24) hours after a detention hearing or ninety-six (96) hours or, if the ninety-six (96) hours ends on a Saturday, Sunday, or a holiday, at the close of the next business day, after an alleged delinquent juvenile is taken into custody, whichever is sooner, the alleged delinquent juvenile shall be discharged from custody, detention, or shelter care.

History. Acts 1989, No. 273, § 12; 1993, No. 882, § 1; 1994 (2nd Ex. Sess.), No. 55, § 2; 1994 (2nd Ex. Sess.), No. 56, § 2; 1999, No. 1340, § 12; 2001, No. 1582, § 1; 2001, No. 1610, § 2; 2003, No. 1166, § 8; 2005, No. 1990, § 5; 2009, No. 758, § 12; 2011, No. 873, § 1; 2015, No. 1024, §§ 1, 2; 2019, No. 531, § 1.

Amendments. The 2015 amendment rewrote (a)(1)(C); in the introductory language of (c), substituted “a police officer, law enforcement, or designated employee of the Department of Human Services” for

“a law enforcement officer, a representative of the department, or other authorized person”, deleted “alleged to be dependent neglected or” following “juvenile”, and substituted “§ 12-18-1001” for “the Child Maltreatment Act, § 12-18-101 et seq.”; substituted “custodial parent, non-custodial parent, guardian, or custodian of the juvenile” for “parents” in the introductory language of (c)(1)(B); and rewrote (c)(1)(B)(ii) and (iii).

The 2019 amendment rewrote the introductory language of (c).

CASE NOTES

ANALYSIS

Constitutionality.

Construction.

Applicability.

Detention.

Discretion of Prosecutor.

Jurisdiction.

Noncompliance.

Constitutionality.

Election of officers to take children to city jail rather than to juvenile court was not a violation of any federally guaranteed right. *Pritchard v. Downie*, 326 F.2d 323 (8th Cir. 1964) (decision under prior law).

Construction.

Former statutes, governing charging of juveniles, could readily be harmonized, and meant that a person who was 15, 16, or 17 at the time of the offense could be charged in the circuit court, municipal court, or juvenile court. *State v. Banks*, 271 Ark. 331, 609 S.W.2d 10 (1980) (decision under prior law).

The word “shall,” relating to the duties of the judge, requires mandatory compliance. *Baumer v. State*, 300 Ark. 160, 777

S.W.2d 847 (1989) (decision under prior law).

Applicability.

Where juvenile had been arrested on a circuit court felony bench warrant, but neither the abstract nor transcript shows a copy of an indictment or information setting out the felony offenses with which the juvenile was charged, the juvenile had not been charged with a felony in circuit court as an adult when the law officers interrogated him and gained his confession; thus, the Juvenile Code was applicable at the time juvenile gave his statement, and his statement was therefore inadmissible at trial because the law enforcement officer’s conduct failed to comport with required Juvenile Code procedures when they obtained juvenile’s confession. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994).

Detention.

Minor children suing police chief for denial of their federal rights, alleging that arresting officers violated former statute which provided for separation of juvenile and adult convicts did not have their

rights denied, as none of the plaintiffs were committed by a court or magistrate. *Pritchard v. Downie*, 326 F.2d 323 (8th Cir. 1964) (decision under prior law).

Where child had been taken into emergency custody after the father was arrested, the trial court erred in adjudicating the child dependent under § 9-27-303 as there were two family members who testified at the adjudication hearing that they were willing to take care of the child. *Moiser v. Ark. Dep't of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

Discretion of Prosecutor.

Former statute granted a prosecuting attorney discretion in which court he would charge certain juveniles, and this authority given to a prosecuting attorney coincided with the provision that permitted certain juveniles to be tried in circuit court or municipal court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

Jurisdiction.

Former statute, when construed with the rest of the Arkansas Juvenile Code,

did not require that all juveniles under eighteen years of age be charged and tried for criminal acts in juvenile court; a prosecuting attorney had discretion to charge juveniles over fifteen years of age in juvenile, municipal, or circuit court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

Noncompliance.

A violation of requirement that juvenile be taken immediately before the court after arrest did not require dismissal of the charges. *State v. Banks*, 271 Ark. 331, 609 S.W.2d 10 (1980) (decision under prior law).

Cited: *State v. Pulaski County Circuit-Chancery Court*, 316 Ark. 473, 872 S.W.2d 854 (1994); *Whitehead v. State*, 316 Ark. 563, 873 S.W.2d 800 (1994); *K.W. v. State*, 327 Ark. 205, 937 S.W.2d 658 (1997); *Ark. Dep't of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002); *Ark. Dep't of Human Servs. v. Collier*, 351 Ark. 506, 95 S.W.3d 772 (2003); *Ark. Dep't of Human Servs. v. Veasley*, 2016 Ark. App. 175 (2016).

9-27-314. Emergency orders.

(a)(1) In a case in which there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent the juvenile's removal from the state, the circuit court shall issue an ex parte order for emergency custody to remove the juvenile from the custody of the parent, guardian, or custodian and shall determine the appropriate plan for placement of the juvenile.

(2)(A) In a case in which there is probable cause to believe that an emergency order is necessary to protect the health or physical well-being of the juvenile from immediate danger, the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile.

(B) Specific appropriate safeguards shall include without limitation the authority of the circuit court to restrict a legal custodian from:

(i) Having any contact with the juvenile; or

(ii) Removing a juvenile from a placement if the:

(a) Legal custodian placed or allowed the juvenile to remain in that home for more than six (6) months; and

(b) Department of Human Services has no immediate health or physical well-being concerns with the placement.

(3) In a case in which there is probable cause to believe that a juvenile is a dependent juvenile as defined in this subchapter, the court

shall issue an ex parte order for emergency custody placing custody of the dependent juvenile with the department.

(b) The emergency order shall include:

(1) Notice to all defendants and respondents named in the petition of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order;

(2) Notice of a defendant's or respondent's right to be represented by counsel;

(3)(A) Notice of a defendant's or respondent's right to obtain appointed counsel, if eligible, and the procedure for obtaining appointed counsel.

(B) A court shall:

(i) Appoint counsel for the parent or custodian from whom legal custody was removed in the ex parte emergency order; and

(ii) Determine eligibility at the probable cause hearing; and

(4) The address and telephone number of the circuit court and the date and time of the probable cause hearing, if known.

(c)(1) Immediate notice of the emergency order shall be given by the petitioner or by the circuit court to the:

(A) Custodial parent, noncustodial parent, guardian, or custodian of the juvenile; and

(B) Attorney ad litem who represents the juvenile respondent.

(2) The petitioner shall provide copies of any petition, affidavit, or other pleading filed with or provided to the court in conjunction with the emergency order to the provisionally appointed parent counsel under § 9-27-316(h)(6)(B) before the probable cause hearing.

(3) All defendants shall be served with the emergency order according to Rule 4 or Rule 5 of the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

History. Acts 1989, No. 273, § 13; 1995, No. 533, § 4; 1999, No. 1340, § 32; 2005, No. 1990, § 6; 2007, No. 587, § 11; 2009, No. 758, § 13; 2011, No. 792, § 8; 2011, No. 1175, § 3; 2015, No. 1024, § 3; 2017, No. 861, § 1.

Amendments. The 2015 amendment deleted "the parents, guardians, or custodian and the juvenile" following "court to" in the introductory language of (c)(1); inserted (c)(1)(A) and (B); and, in (c)(2) [now (c)(3)], inserted "with the emergency order" and inserted "Rule 4 or 5 of".

The 2017 amendment inserted "circuit" preceding "court" in (a)(2)(B), (b)(4), and (c)(1); substituted "juvenile" for "child" throughout (a)(2)(B); substituted "a defendant's or respondent's" for "their" in (b)(2) and (b)(3)(A); redesignated part of (b)(3)(B) as (b)(3)(B)(i) and (ii); substituted "shall" for "may" in the introductory language of (b)(3)(B); inserted present (c)(2); redesignated former (c)(2) as (c)(3); and made stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Landreneau, Evidence — Former Testimony Exception to the Hearsay Rule Poses Unexpected Hazards to Parents Who Testify in Juve-

nile Court Probable Cause Hearings (Hamblen v. State), 18 U. Ark. Little Rock L.J. 181.

CASE NOTES

ANALYSIS

Discharge from Hospital.
 Immunity of Social Workers.
 Jurisdiction.
 Notice.
 Parties.
 Proof.

Discharge from Hospital.

Discharge of infant from hospital did not violate any affirmative duty under former statute. *Harpole v. Ark. Dep't of Human Servs.*, 820 F.2d 923 (8th Cir. 1987) (decision under prior law).

Immunity of Social Workers.

All actions taken by a social worker are not entitled to absolute immunity. If a social worker unilaterally attempts to influence the parent-child relationship, these actions would fall outside the protected prosecutorial role; in such a case, a lawsuit could proceed against the social worker, and the social worker would only be entitled to assert the defense of qualified immunity. *Fogle v. Benton County SCAN*, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

Actions of supervisor for Arkansas Social Services in the initiation and investigation of a petition to remove child from person's custody due to a suspicion of child abuse were not outside supervisor's quasi-prosecutorial role as an advocate and were thus protected by absolute prosecutorial immunity, and a contention that supervisor's actions were motivated by malicious intent did not remove the protection afforded by absolute prosecutorial immunity. *Fogle v. Benton County SCAN*, 665 F. Supp. 729 (W.D. Ark. 1987) (decision under prior law).

Jurisdiction.

Juvenile court was proper court with jurisdiction to determine whether children should be placed in the temporary care of the state; the juvenile court properly refused to allow the parents to contest

permanent custody of the children at the same proceeding since only the chancery courts have jurisdiction to hear custody cases between private litigants. *Robins v. Ark. Soc. Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981), superseded by statute as stated in, *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994) (decision under prior law).

Notice.

Trial court erred in terminating the father's parental rights based on abandonment because the father was in prison throughout the entirety of the proceeding, there was no evidence that he was served with the emergency order of custody, and the trial court's orders repeatedly found him to be in noncompliance with a case plan of which he had no knowledge. *Brinkley v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 625, 533 S.W.3d 639 (2017).

Parties.

Where children had been abandoned by parents, the state was the proper party plaintiff in its public guardianship capacity. *Robins v. Ark. Soc. Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981), superseded by statute as stated in, *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994) (decision under prior law).

Proof.

Where the state, in its capacity as public guardian of infants, is seeking an order to temporarily care for neglected or dependent children, the preponderance of the evidence standard is proper. *Robins v. Ark. Soc. Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981), superseded by statute as stated in, *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994) (decision under prior law).

Cited: *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994); *Dover v. Ark. Dep't of Human Servs.*, 62 Ark. App. 37, 968 S.W.2d 635 (1998); *Ark. Dep't of Human Servs. v. Veasley*, 2016 Ark. App. 175 (2016).

9-27-315. Probable cause hearing.

(a)(1)(A) Following the issuance of an emergency order, the circuit court shall hold a probable cause hearing within five (5) business

days of the issuance of the ex parte order to determine if probable cause to issue the emergency order continues to exist.

(B)(i) The hearing shall be limited to the purpose of determining whether probable cause existed to protect the juvenile and to determine whether probable cause still exists to protect the juvenile.

(ii) However, the issues as to custody and delivery of services may be considered by the court and appropriate orders for custody and delivery of services entered by the court.

(iii) If the defendant stipulates that probable cause exists, the only evidence that is presented at the probable cause hearing shall be:

(a) Evidence pertaining to visitation; and

(b) Evidence pertaining to services delivered to the family.

(iv) A parent shall not be compelled to testify under any circumstances.

(v) For the sole purpose of the probable cause hearing, the stipulation of a parent that probable cause exists shall also serve as a stipulation to the introduction of the affidavit of the plaintiff.

(2)(A) All other issues, with the exception of custody and services, shall be reserved for hearing by the court at the adjudication hearing, which shall be a separate hearing conducted subsequent to the probable cause hearing.

(B) By agreement of the parties and with the court's approval, the adjudication hearing may be conducted at any time after the probable cause hearing, subject to § 9-27-327(a)(2).

(b) The petitioner shall have the burden of proof by a preponderance of evidence that probable cause exists for continuation of the emergency order.

(c) If the court determines that the juvenile can safely be returned to his or her home pending adjudication and it is in the best interest of the juvenile, the court shall so order.

(d)(1) At the probable cause hearing, the court shall set the time and date of the adjudication hearing.

(2) A written order shall be filed by the court or by a party or party's attorney, as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(e) All probable cause hearings are miscellaneous proceedings as defined in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules of evidence, including, but not limited to, the hearsay rule, Rule 802 of the Arkansas Rules of Evidence, are not applicable.

History. Acts 1989, No. 273, § 14; 1993, No. 1227, § 3; 1995, No. 533, § 5; 1995, No. 1337, § 2; 1997, No. 1227, § 3; 1999, No. 1340, § 33; 2003, No. 1319, § 11; 2005, No. 1990, § 7; 2013, No. 1055, § 8; 2017, No. 1111, § 1; 2019, No. 559, § 1.

Amendments. The 2017 amendment added (a)(1)(B)(iii) and (iv).

The 2019 amendment substituted "orders for custody and delivery of services entered by the court" for "orders for that entered by the court" in (a)(1)(B)(ii); rewrote (a)(1)(B)(iii); rewrote (a)(1)(B)(iv); and added (a)(1)(B)(v).

CASE NOTES

ANALYSIS

In General.
Adjudication Hearing.
Due Process.
Proof.
Timeliness of Order.

In General.

Orders based upon emergency hearings pursuant to this section are not final, appealable orders. *Dover v. Ark. Dep't of Human Servs.*, 62 Ark. App. 37, 968 S.W.2d 635 (1998).

Adjudication Hearing.

While an adjudication hearing is generally necessary in a dependency-neglect case in order for the circuit court to consider and determine all of the issues involved, this section does not require the circuit court to hold such a hearing; therefore, in a case where a child from Oklahoma was left unattended in a car in Arkansas by his mother, a trial court did not err by placing the child with his paternal grandparents in Oklahoma at a probable cause hearing since there were no additional issues to consider. Moreover, the trial court was permitted to grant permanent custody at a probable cause hearing under subdivision (a)(1)(B) of this section. *Ark. Dep't of Health & Human Servs. v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

Trial court erred when it failed to conduct a scheduled adjudication hearing and take evidence on the issue of whether a mother's children were dependent-neglected and whether the assessments, evaluations, and services provided by the Department of Human Services were effective. Because there was no custody order in place, the trial court's order closing the case had the effect of returning the children to the legal custody of their mother without first addressing the need to protect the juveniles from further harm. *Ark. Dep't of Human Servs. v. Veasley*, 2016 Ark. App. 175 (2016).

Due Process.

Parents sought to hold the social workers individually liable for failing to provide them with a prompt post-deprivation hearing, but the statutory authority and duty to schedule and conduct a hearing was placed in the circuit court. Neither social worker had the authority to schedule such a hearing. *Webb v. Smith*, No. 4:17CV00660 JLH, 2018 U.S. Dist. LEXIS 118406 (E.D. Ark. June 20, 2018), *aff'd in part, rev'd in part* on other grounds, 936 F.3d 808 (8th Cir. 2019).

Parents' argument reduced to a form of strict liability: the post-deprivation hearing was not held promptly, so the social workers who were responsible for custody of the children must be held individually liable whether they were at fault or not. The court found no support for the proposition that social workers can be held individually liable for alleged constitutional violations for which they were not personally responsible. *Webb v. Smith*, No. 4:17CV00660 JLH, 2018 U.S. Dist. LEXIS 118406 (E.D. Ark. June 20, 2018), *aff'd in part, rev'd in part* on other grounds, 936 F.3d 808 (8th Cir. 2019).

Proof.

Where the state, in its capacity as public guardian of infants, is seeking an order to temporarily care for neglected or dependent children, the preponderance of the evidence standard is proper. *Robins v. Ark. Soc. Servs.*, 273 Ark. 241, 617 S.W.2d 857 (1981), superseded by statute as stated in, *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994) (decision under prior law).

Timeliness of Order.

Circuit court's untimely orders of probable cause and adjudication, which were both entered beyond the statutorily prescribed 30 days, did not warrant reversal or any other sanction. *Westbrook v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 352, 584 S.W.3d 258 (2019).

Cited: *Ark. Dep't of Human Servs. v. Dearman*, 40 Ark. App. 63, 842 S.W.2d 449 (1992).

9-27-316. Right to counsel.

(a)(1) In delinquency and family-in-need-of-services cases, a juvenile and his or her parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's first appearance before the circuit court that the juvenile has the right to be represented at all stages of the proceedings by counsel.

(2) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b)(1)(A) The inquiry concerning the ability of the juvenile to retain counsel shall include a consideration of the juvenile's financial resources and the financial resources of his or her family.

(B) However, the failure of the juvenile's family to retain counsel for the juvenile shall not deprive the juvenile of the right to appointed counsel if required under this section.

(2) After review by the court of an affidavit of financial means completed and verified by the parent of the juvenile and a determination by the court that the parent or juvenile has the ability to pay, the court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney's fees and expenses for representation of a juvenile.

(3) All moneys collected by the circuit clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "juvenile representation fund".

(4) The court may direct that money from this fund be used in providing counsel for juveniles under this section in delinquency or family-in-need-of-services cases and indigent parents or guardians in dependency-neglect cases as provided by subsection (h) of this section.

(5) Any money remaining in the fund at the end of the fiscal year shall not revert to any other fund but shall carry over into the next fiscal year in the juvenile representation fund.

(c) If counsel is not retained for the juvenile or it does not appear that counsel will be retained, counsel shall be appointed to represent the juvenile at all appearances before the court unless the right to counsel is waived in writing as set forth in § 9-27-317.

(d) In a proceeding in which the judge determines that there is a reasonable likelihood that the proceeding may result in the juvenile's commitment to an institution in which the freedom of the juvenile would be curtailed and counsel has not been retained for the juvenile, the court shall appoint counsel for the juvenile.

(e) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(f)(1) The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Supreme Court to represent the best interest of the juvenile when a dependency-neglect

petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier.

(2) The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem.

(3) Each attorney ad litem shall:

(A) File written motions, responses, or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile;

(B) Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and

(C) Present witnesses and exhibits when necessary to protect the juvenile's best interest.

(4) An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and records, including those maintained electronically and in the Children's Reporting and Information System, of the Department of Human Services relating to the juvenile and his or her family to the extent permitted by federal law.

(5)(A) An attorney ad litem shall represent the best interest of the juvenile.

(B) If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his or her determination of the juvenile's best interest.

(g)(1) The court may appoint a volunteer court-appointed special advocate from a program that shall meet all state and national court-appointed special advocate standards to advocate for the best interest of juveniles in dependency-neglect proceedings.

(2) No court-appointed special advocate shall be assigned a case before:

(A) Completing a training program in compliance with National Court Appointed Special Advocate Association and state standards; and

(B) Being approved by the local court-appointed special advocate program, which will include appropriate criminal background and child abuse registry checks.

(3) Each court-appointed special advocate shall:

(A)(i) Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony, or court reports.

(ii) The court-appointed special advocate may testify if called as a witness.

(iii) When the court-appointed special advocate prepares a written report for the court, the advocate shall provide all parties or the attorney of record with a copy of the written report seven (7) business days before the relevant hearing; and

(B) Monitor the case to which he or she is assigned to ensure compliance with the court's orders.

(4) Upon presentation of an order of appointment, a court-appointed special advocate shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and department records, including those maintained electronically and in the Children's Reporting and Information System, to the extent permitted by federal law.

(5) A court-appointed special advocate is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses.

(6) A court-appointed special advocate shall not be liable for damages for personal injury or property damage pursuant to the Arkansas Volunteer Immunity Act, § 16-6-101 et seq.

(7) Except as provided in this subsection, a court-appointed special advocate shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law.

(h)(1)(A) All parents and custodians have a right to counsel in all dependency-neglect proceedings.

(B) In all dependency-neglect proceedings that set out to remove legal custody from a parent or custodian, the parent or custodian from whom custody was removed shall have the right to be appointed counsel, and the court shall appoint counsel if the court makes a finding that the parent or custodian from whom custody was removed is indigent and counsel is requested by the parent or custodian.

(C)(i) Parents and custodians shall be advised in the dependency-neglect petition or the ex parte emergency order, whichever is sooner, and at the first appearance before the court, of the right to counsel and the right to appointed counsel, if eligible.

(ii) As required under § 9-27-314, a circuit court shall appoint counsel in an ex parte emergency order and shall determine eligibility at the commencement of the probable cause hearing.

(D) All parents shall have the right to be appointed counsel in termination of parental rights hearings, and the court shall appoint counsel if the court makes a finding that the parent is indigent and counsel is requested by the parent.

(E) In a dependency-neglect proceeding naming a minor parent as a defendant, the court shall appoint a qualified parent counsel for the minor parent.

(2) If at the permanency planning hearing or at any time the court establishes the goal of adoption and counsel has not yet been appointed for a parent, the court shall appoint counsel to represent the parent as provided by subdivision (h)(1)(D) of this section.

(3) Putative parents do not have a right to appointed counsel in dependency-neglect proceedings, except for termination of parental rights proceedings, only if the court finds on the record that:

(A) The putative parent is indigent;

(B) The putative parent has established significant contacts with the juvenile so that putative rights attach;

(C) Due process requires appointment of counsel for a full and fair hearing for the putative parent in the termination hearing; and

(D) The putative parent requested counsel.

(4)(A) A putative parent has the burden to prove paternity and significant contacts with the child.

(B) The court shall make the findings required in subdivision (h)(3) of this section to determine whether a putative parent is entitled to appointed counsel at the termination hearing.

(C)(i) The termination petition shall include the putative parent as provided under § 9-27-311(c)(2)(B).

(ii) The court shall appoint counsel subject to subdivision (h)(3) of this section for the putative parent at any time the court establishes adoption as the case goal with a termination of parental rights petition to be filed.

(5)(A) The court shall order financially able parents or custodians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation after review by the court of an affidavit of financial means completed and verified by the parent or custodian and a determination by the court of an ability to pay.

(B)(i) All moneys collected by the clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "Juvenile Court Representation Fund".

(ii) The court may direct that money from the fund be used in providing counsel for indigent parents or custodians at the trial level in dependency-neglect proceedings.

(iii) Upon a determination of indigency and a finding by the court that the fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and state funds have been exhausted, the court may order the county to pay these reasonable fees and expenses until the state provides funding for counsel.

(6)(A) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(B)(i) When the first appearance before the court is an emergency hearing to remove custody under § 9-27-315, parents shall be appointed a parent counsel in a timely manner for meaningful representation until eligibility for appointed counsel is determined by the court under subdivision (h)(1)(B) of this section.

(ii) If in the interest of time or availability of qualified parent counsel it becomes necessary for a provisional parent counsel or counsel other than the parent counsel originally appointed under subdivision (h)(1)(B) of this section, a substitute parent counsel shall be appointed.

(7) The attorney for the parent or custodian shall be provided access to all records relevant to the juvenile's case, including without limita-

tion school records, medical records, all court records relating to the juvenile and his or her family, and department records relating to the juvenile and his or her family, including those maintained electronically and in the Children's Reporting and Information System, to which the parent or custodian is entitled under state and federal law.

(8)(A) In all cases where a court has determined that appointed counsel for an indigent parent or custodian is necessary under this subsection, the court shall appoint counsel in compliance with federal law and Supreme Court Administrative Order No. 15.

(B) When a court orders payment of funds for parent counsel on behalf of an indigent parent or custodian from a state contract, the court shall make written findings in the appointment order in compliance with this section.

History. Acts 1989, No. 273, § 15; 1997, No. 1227, § 4; 1999, No. 1192, § 14; 1999, No. 1340, § 13; 2001, No. 987, § 2; 2001, No. 1503, § 4; 2003, No. 1166, § 9; 2003, No. 1809, § 2; 2005, No. 1990, § 8; 2011, No. 1175, § 4; 2013, No. 761, § 2; 2015, No. 1017, §§ 6-9; 2015, No. 1022, § 2; 2017, No. 861, §§ 2-4; 2019, No. 541, § 3.

Amendments. The 2015 amendment by No. 1017, in (f)(4), inserted "including those maintained electronically and in the Children's Reporting and Information System" and inserted "relating to the juvenile and his or her family"; inserted "including those maintained electronically and in the Children's Reporting and Information System" in (g)(4); added (h)(1)(E); and inserted "relating to the juvenile and his or her family, including those maintained electronically and in the Children's Reporting and Information System" in (h)(7).

The 2015 amendment by No. 1022, in (h)(2), inserted "or at any time" and deleted "in the permanency planning order" following "appoint counsel"; inserted "the court finds in the record that" in the introductory language of (h)(3); deleted "court makes a finding on the record that"

preceding "the putative" in (h)(3)(A); deleted "court finds that the" preceding "putative" in (h)(3)(B); deleted former (h)(4); and added present (h)(4).

The 2017 amendment redesignated former (h)(1)(C) as (h)(1)(C)(i) and added (h)(1)(C)(ii); redesignated former (h)(6)(B) as (h)(6)(B)(i); substituted "appointed a parent counsel in a timely manner for meaningful representation until eligibility for appointed counsel is determined by the court under subdivision (h)(1)(B) of this section" for "notified of the right to appointed counsel if indigent in the emergency ex parte order" in (h)(6)(B)(i); added (h)(6)(B)(ii); and added (h)(8).

The 2019 amendment redesignated former (h)(4)(A)(i) as (h)(4)(A); in (h)(4)(A), inserted "paternity and" and deleted "so that putative rights attach" following "child"; deleted (h)(4)(A)(ii); in (h)(4)(C)(i), substituted "The termination petition" for "If the court determines that the putative parent is entitled to appointed counsel under subdivision (h)(3) of this section, the termination petition" and added "as provided under § 9-27-311(c)(2)(B)"; and deleted (h)(4)(D).

Cross References. Confessions, § 9-27-366.

RESEARCH REFERENCES

ALR. Right to Effective Counsel at Termination of Parental Rights Proceeding and Standards of Review of Claim. 23 A.L.R.7th Art. 3 (2017).

Ark. L. Rev. Recent Developments, Do-

mestic Relations — Termination of Parental Rights, 57 Ark. L. Rev. 1015.

Note, What About the Child?: A Critique of Linker-Flores v. Arkansas Department of Human Services, 60 Ark. L. Rev. 353.

CASE NOTES

ANALYSIS

Attorney's Fees.
Disqualification.
Right to Counsel.
Termination of Parental Rights.

Attorney's Fees.

In the absence of any precedent for an allowance of fees under this section to be made directly by the appellate court, a petition for attorney's fees, including representation on appeal is remanded for the trial court to determine the petitioner's entitlement to attorney's fees from the Juvenile Court Representation Fund pursuant to this section. *Cochran v. Ark. Dep't of Human Servs.*, 44 Ark. App. 105, 865 S.W.2d 651 (1993).

Petition directly to appellate court for fees as provided by this section, made by attorney who represented client at trial and on appeal, remanded to trial court for determination. *Evans v. Ark. Dep't of Human Servs.*, 48 Ark. App. 157, 892 S.W.2d 525 (1995).

The principles that require payment of attorney's fees for representing an indigent criminal defendant are applicable to termination cases as well, because it would be unconstitutional to appoint counsel and then deny that counsel reasonable payment for services rendered. *Baker v. Ark. Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

The court erred when it ordered payment of attorney's fees from the Juvenile Court Representation Fund in a proceeding for the termination of parental rights as that fund is not designated for payment of attorney's fees in such cases. *Baker v. Ark. Dep't of Human Servs.*, 340 Ark. 409, 16 S.W.3d 530 (2000).

Parent's attorney was entitled to a reasonable attorney's fee and costs for work provided in trial court proceedings to terminate parental rights; however, the attorney had to submit her request to the Arkansas State Claims Commission for payment because the legislature had failed to designate a source for payment and the Juvenile Court Representation Fund was not available for payment of appointed attorney's fees and costs for work performed on appeal. *Walters v. Ark.*

Dep't of Human Servs., 83 Ark. App. 85, 118 S.W.3d 134 (2003).

Disqualification.

Trial court's decision to deny a motion to disqualify an attorney ad litem in a family-in-need-of-services case was upheld on review because there was no evidence that the attorney was biased against a mother, despite representing her ex-husband in a prior divorce matter. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007), overruled in part, *Mahone v. Ark. Dep't of Human Servs.*, 2011 Ark. 370, 383 S.W.3d 854 (2011).

Right to Counsel.

Juveniles have a due process right to counsel on appeal based on the application of the reasoning in *Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). *Gilliam v. State*, 305 Ark. 438, 808 S.W.2d 738 (1991).

The provisions of *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), which protect an adult defendant's right to counsel on appeal, should apply to the appeal of an adjudication of juvenile delinquency. *Gilliam v. State*, 305 Ark. 438, 808 S.W.2d 738 (1991).

Juvenile was deprived of his right to counsel during a contempt proceeding, even though the juvenile had the services of an attorney ad litem, because the ad litem only represented the best interest of the juvenile, and not the juvenile's due process and other constitutional rights, as a defense attorney would. *Ark. Dep't of Human Servs. v. Mainard*, 358 Ark. 204, 188 S.W.3d 901 (2004).

Anders procedures apply in cases of indigent parent appeals from orders terminating parental rights, therefore, appointed counsel for an indigent parent on a first appeal from an order terminating parental rights may petition the appellate court to withdraw as counsel if, after a conscientious review of the record, counsel could find no issue or arguable merit for appeal; thus, the mother's attorney's motion to withdraw was premature until such time as a no-merit was filed. *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004).

In a parental rights termination case, counsel was not ineffective because, al-

though the mother testified that she had initially refused to cooperate with the state on the advice of her first attorney, she never specifically raised the issue of his ineffectiveness. *Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

Because of the similarities in termination of parental rights proceedings and criminal cases, the appellate court adopts the standard for ineffectiveness of counsel set out in *Strickland*. *Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

Trial court erred in not appointing counsel for father at the dependency-neglect adjudication hearing because he was indigent and his children were effectively taken away from him when the father was ordered to move from the home. *Clark v. Ark. Dep't of Human Servs.*, 90 Ark. App. 446, 206 S.W.3d 899 (2005).

After trial court entered order finding that child was a member of a family in need of services the father attempted to appeal on the child's behalf but he was not a licensed attorney who could represent the child on an appeal, and the matter was not a final order. *Bass v. State*, 93 Ark. App. 411, 219 S.W.3d 697 (2005).

Father was not denied due process based on the failure to appoint counsel before the hearing to terminate parental rights; the father conceded that he was not a parent "from whom custody was removed" under subdivision (h)(1)(B) of this section until he was adjudicated a parent, and the circuit court appointed counsel as soon as the proper findings were made regarding paternity, indigency, and a request for counsel. *Hunter v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 500, 562 S.W.3d 883 (2018).

Circuit court did not err in terminating a father's parental rights where the father argued on appeal that he was denied his right to timely appointed counsel; contrary to the father's assertion, the children were not removed from his legal custody, he and the mother were not married, and he was correctly identified as the putative father at the outset of the case. Instead of submitting the acknowledgments of paternity to the court that had been executed when the children were born, the father submitted to a DNA test and was only later found to be the children's "biological and legal father", at

which point he was entitled to counsel if requested, but he did not request counsel until the 15-month permanency planning hearing, at which time the court granted his request. *Fox v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 13, 592 S.W.3d 260 (2020).

Termination of Parental Rights.

The requirement in this section, that counsel be provided when the issue is termination of parental rights, is mandatory. *Briscoe v. State*, 323 Ark. 4, 912 S.W.2d 425 (1996).

Assuming, without deciding, that a mother had a due process right to counsel in a proceeding to terminate her parental rights, her request to waive counsel was not unequivocal and, therefore, it would have been error for the trial court to accept that waiver, regardless of the provisions contained in this section, because her request did not satisfy constitutional standards for the waiver of counsel. *Bearden v. State Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

Because a mother failed to file a timely notice of appeal pursuant to Ark. R. App. P. Civ. 2 from the trial court's adjudication order, the appellate court was unable to consider the mother's arguments relating to errors made during the adjudication hearing; however, the appellate court did consider whether the trial court's failure to provide counsel to the mother during the adjudication hearing tainted the remainder of the case, which resulted in termination of parental rights under § 9-27-341 and found no such taint. *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004).

Trial court's order terminating a mother's parental rights was reversed where she had a right to counsel at the termination hearing, she had specifically requested counsel, and the trial court failed to determine whether she was indigent or appoint counsel for her, thereby violating subdivision (h)(1)(D) of this section as a matter of law. *Basham v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 243, 459 S.W.3d 824 (2015).

Father could not show harm from the trial court failing to appoint counsel from the beginning of a proceeding because the father, who was incarcerated, was not a parent from whom custody was removed, and the father was not entitled to ap-

pointed counsel before the process moved to termination of the father's rights. Furthermore, the court did appoint counsel for the father almost three months before the hearing on the petition to terminate parental rights. *Sills v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 9, 538 S.W.3d 249 (2018).

Termination of the father's parental rights was improper because he was denied his statutory right to counsel. The Department of Human Services did not dispute that the father was entitled to counsel at the onset and the failure to provide him counsel was error, but it claimed instead that the error was harmless; the appellate court disagreed, stating that there was no evidence that the father assented to the stipulations or that he understood the gravity of stipulations as they related to his parental rights. *Buck v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 258, 548 S.W.3d 231 (2018).

While a mother was entitled to counsel at the termination of parental rights hearing and her attorney had filed a motion to withdraw, the circuit court properly terminated her parental rights because she never argued to the circuit court that her state or federal constitutional rights had been violated, her firing of her attorney on the eve of the termination hearing—with no arrangements made for substitute

counsel—plainly frustrated the court's power to conduct an orderly and efficient proceeding, and the mother had over a month between the time she was served notice of the termination hearing and the hearing itself to either request a continuance or make arrangements to obtain new counsel. *Langston v. Ark. Dep't of Human Servs.*, 2019 Ark. 152, 574 S.W.3d 138 (2019).

Trial court did not err in not appointing counsel to the father initially before the goal of the case was changed to termination because he was not the parent from whose custody the children were removed; he was not initially indigent; although he may have become indigent after a car wreck, he did not notify the Department of Human Services of his employment status as instructed early on; and there was no indication that he ever requested that counsel be appointed to represent him at the hearings he attended. *Hernandez v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 449, 588 S.W.3d 102 (2019).

Cited: *In re Hutton*, 301 Ark. 538, 785 S.W.2d 33 (1990); *Ingram v. State*, 53 Ark. App. 77, 918 S.W.2d 724 (1996); *B.H.1 v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 532 (2012); *Williams v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 171, 458 S.W.3d 271 (2015); *T.S.B. v. Robinson*, 2019 Ark. App. 359, 586 S.W.3d 650 (2019).

9-27-317. Waiver of right to counsel — Detention of juvenile — Questioning.

(a) Waiver of the right to counsel at a delinquency or family in need of services hearing shall be accepted only upon a finding by the court from clear and convincing evidence, after questioning the juvenile, that:

(1) The juvenile understands the full implications of the right to counsel;

(2) The juvenile freely, voluntarily, and intelligently wishes to waive the right to counsel; and

(3) The parent, guardian, custodian, or counsel for the juvenile has agreed with the juvenile's decision to waive the right to counsel.

(b) The agreement of the parent, guardian, custodian, or attorney shall be accepted by the court only if the court finds:

(1) That the person has freely, voluntarily, and intelligently made the decision to agree with the juvenile's waiver of the right to counsel;

(2) That the person has no interest adverse to the juvenile; and

(3) That the person has consulted with the juvenile in regard to the juvenile's waiver of the right to counsel.

(c) In determining whether a juvenile's waiver of the right to counsel at any stage of the proceeding was made freely, voluntarily, and intelligently, the court shall consider all the circumstances of the waiver, including:

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the waiver;
- (3) In cases in which the custodial parent, guardian, or custodian agreed with the juvenile's waiver of the right to counsel, whether the parent, guardian, or custodian understood the consequences of the waiver;
- (4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the waiver of the right to counsel was the result of any coercion, force, or inducement;
- (6) Whether the juvenile and his or her custodial parent, guardian, or custodian had been advised of the juvenile's right to remain silent and to the appointment of counsel and had waived such rights; and
- (7) Whether the waiver was recorded in audio or video format and the circumstances surrounding the availability or unavailability of the recorded waiver.

(d) No waiver of the right to counsel shall be accepted in any case in which the parent, guardian, or custodian has filed a petition against the juvenile, initiated the filing of a petition against the juvenile, or requested the removal of the juvenile from the home.

(e) No waiver of the right to counsel shall be accepted in any case in which counsel was appointed due to the likelihood of the juvenile's commitment to an institution under § 9-27-316(d).

(f) No waiver of counsel shall be accepted when a juvenile has been designated an extended juvenile jurisdiction offender.

(g) No waiver of the right to counsel shall be accepted when a juvenile is in the custody of the Department of Human Services, including the Division of Youth Services.

(h)(1) All waivers of the right to counsel, except those made in the presence of the court pursuant to subsection (a) of this section, shall be in writing and signed by the juvenile.

(2)(A) When a custodial parent, guardian, or custodian cannot be located or is located and refuses to go to the place where the juvenile is being held, counsel shall be appointed for the juvenile.

(B) Procedures shall then be the same as if the juvenile had invoked counsel.

(i)(1)(A) Whenever a law enforcement officer has reasonable cause to believe that any juvenile found at or near the scene of a felony is a witness to the offense, he or she may stop that juvenile.

(B) After having identified himself or herself, the officer must advise the juvenile of the purpose of the stopping and may then demand of the juvenile his or her name, address, and any information the juvenile may have regarding the offense.

(C) Such detention shall in all cases be reasonable and shall not exceed fifteen (15) minutes, unless the juvenile shall refuse to give

this information, in which case the juvenile, if detained further, shall immediately be brought before any judicial officer or prosecuting attorney to be examined with reference to his or her name, address, or the information the juvenile may have regarding the offense.

(2)(A) A law enforcement officer who takes a juvenile into custody for a delinquent or criminal offense shall advise the juvenile of his or her Miranda rights in the juvenile’s own language.

(B) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense until the law enforcement officer has advised the juvenile of his or her rights pursuant to subdivision (i)(2)(C) of this section in the juvenile’s own language.

(C) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense if the juvenile has indicated in any manner that he or she:

- (i) Does not wish to be questioned;
- (ii) Wishes to speak with his or her custodial parent, guardian, or custodian or to have that person present; or
- (iii) Wishes to consult counsel before submitting to any questioning.

(D) Any waiver of the right to counsel by a juvenile shall conform to subsection (h) of this section.

History. Acts 1989, No. 273, § 16; 1994 (2nd Ex. Sess.), No. 67, § 1; 1994 (2nd Ex. Sess.), No. 68, § 1; 1999, No. 1192, § 15; 2001, No. 1610, § 3; 2009, No. 759, § 2.

Publisher’s Notes. Miranda rights, re-

ferred to in subdivision (i)(2)(A), are set out in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Cross References. Confessions, § 9-27-366.

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CASE NOTES

ANALYSIS

- Constitutionality.
- In General.
- Communication with Parent or Guardian.
- Confession Held Admissible.
- Court.
- Duty of Juvenile.
- Parental Consent.
- Right to Counsel.
- Waiver of Right to Counsel.

Constitutionality.

This section is not arbitrary and capricious; rather, the legislature, in enacting the section, acknowledged that an older juvenile who commits a serious crime may not receive the protection of juvenile proceedings, but will face the consequences as an adult and, accordingly, a juvenile over the age of 16 who commits a crime that would subject him to adult punishment will not be accorded the protection of

full parental involvement in the interrogation process. *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996).

In General.

A 13-year-old juvenile can make a knowing and intelligent waiver of rights without the presence of an adult. *Matthews v. State*, 67 Ark. App. 35, 991 S.W.2d 639 (1999).

Where a law enforcement officer read juvenile defendant his rights and obtained a signed waiver form before each interview with defendant, and defendant was tried as an adult, the interview procedures applicable to juvenile courts did not apply. *Shields v. State*, 357 Ark. 283, 166 S.W.3d 28 (2004).

Because subdivisions (i)(2)(A) and (B) of this section had not yet been enacted at the time defendant was questioned, defendant's reliance upon the statute was misplaced; the appellate court has a duty to construe statutes as having only a prospective operation unless the purpose and intention of the legislature to give them a retroactive effect is expressly declared or necessarily implied from the language used and, since the statute in question contained neither an emergency clause nor any language indicating that it was to be applied retroactively, it could only be applied prospectively. *Jackson v. State*, 359 Ark. 87, 194 S.W.3d 757 (2004).

Pursuant to Ark. R. Crim. P. 3, the state's interlocutory appeal was dismissed because it failed to comply with the rule; the state's argument about whether defendant's grandmother was a "custodian" under subdivision (h)(2)(A) of this section was a question of fact not subject to appeal by the state under Rule 3. *State v. S.G.*, 373 Ark. 364, 284 S.W.3d 62 (2008).

Communication with Parent or Guardian.

There was no violation of a juvenile's right to speak to his mother during his questioning by police where there was evidence in the record that his mother requested to speak to him, but there was no evidence that the juvenile himself invoked his statutory right to have a parent or guardian present during questioning. *Conner v. State*, 334 Ark. 457, 982 S.W.2d 655 (1998).

Officers are not required to inform juveniles of their right to speak to their parent

or guardian or to have one present during questioning. *Miller v. State*, 338 Ark. 445, 994 S.W.2d 476 (1999).

The right of a juvenile to speak to a parent or guardian does not apply where the juvenile is tried as an adult, since the procedures and penalties prescribed for adults apply in such a circumstance. *Ray v. State*, 65 Ark. App. 209, 987 S.W.2d 738 (1999).

A police officer is not required to inform a juvenile of his or her right to have a parent or guardian present during questioning. *Matthews v. State*, 67 Ark. App. 35, 991 S.W.2d 639 (1999).

It is unnecessary for a juvenile's parent, guardian, or custodian to consent to his or her waiver of the right to counsel in connection with a custodial statement. *Matthews v. State*, 67 Ark. App. 35, 991 S.W.2d 639 (1999).

Subdivision (i)(2)(C)(ii) of this section, which requires that a law enforcement officer not question a juvenile who wishes to speak with a parent or guardian or to have a parent or guardian present, does not apply to a juvenile whom the prosecuting attorney has exercised his discretion to charge as an adult. *Ray v. State*, 344 Ark. 136, 40 S.W.3d 243 (2001).

As the felony information charging defendant with capital murder was not filed in juvenile court, defendant had no right to assert that defendant's mother should have been present during defendant's questioning by detectives. *Jenkins v. State*, 348 Ark. 686, 75 S.W.3d 180 (2002).

Appellee juvenile's statements were properly suppressed in his delinquency action because although police detectives read him his Miranda rights and appellee understood those rights, the authorities failed to notify appellee's parent that he had been taken into custody as required by subdivision (h)(2)(A) of this section. *State v. L.P.*, 369 Ark. 21, 250 S.W.3d 248 (2007).

Under subdivision (h)(2)(A) of this section, authorities must notify a parent when his or her child has been taken into custody; the parent can then go to the place where the juvenile is being held and under subdivision (i)(2)(C) of this section, if the juvenile requests to speak to a parent that parent will be present. If, on the other hand, the parent chooses not to go to the place where the juvenile is being detained, counsel is appointed to repre-

sent the juvenile, and again, if the juvenile invokes his right to speak to an attorney, then one has already been appointed to represent him. *State v. L.P.*, 369 Ark. 21, 250 S.W.3d 248 (2007).

Confession Held Admissible.

Defendant's confession was admissible where defendant and his mother signed the requisite rights waiver forms and both acknowledged that they understood that defendant did not have to give a statement and that anything he said could be used against him in court, both defendant and his mother agreed that his statement was not coerced, but was given because defendant's mother advised him to tell the truth, and where the evidence showed that defendant and his mother were repeatedly informed of his right to an attorney, and that if this right was invoked the questioning would stop. *Ingram v. State*, 53 Ark. App. 77, 918 S.W.2d 724 (1996).

Court.

The term "court" as used in this section means "the juvenile division of circuit court" under § 9-27-303(8) (now (12)). *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993).

Duty of Juvenile.

Subsection (g) (now ^{ff} subdivision (i)(2)(C)(ii)) of this section places the burden on the child to ask to consult with a parent. *Isbell v. State*, 326 Ark. 17, 931 S.W.2d 74 (1996).

Parental Consent.

This section's requirement that the custodial parent consent to a waiver does not apply to proceedings in circuit court; equally important, this section's requirement of parental consent to a waiver is limited to proceedings in the juvenile division of chancery court. *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993).

Where a prosecutor chooses to prosecute a juvenile in circuit court as an adult, the juvenile becomes subject to the procedures and penalties prescribed for adults; thus, when a juvenile is charged in circuit court, the requirement in subsection (f) of this section that the juvenile's

parents consent to the juvenile's waiver of right to counsel, is not applicable. *Ring v. State*, 320 Ark. 128, 894 S.W.2d 944 (1995).

When a person under age 18 is charged as an adult in circuit court, failure to obtain a parent's signature on a waiver form does not render a confession inadmissible; rather, when a juvenile is charged as an adult, he becomes subject to the procedures applicable to adults. *Miskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996).

Where the defendant was charged as an adult in circuit court, the police were not required to obtain parental consent to his waiver of his right to counsel. *Conner v. State*, 334 Ark. 457, 982 S.W.2d 655 (1998).

Right to Counsel.

After trial court entered order finding that child was a member of a family in need of services the father attempted to appeal on the child's behalf but he was not a licensed attorney who could represent the child on an appeal, and the matter was not a final order. *Bass v. State*, 93 Ark. App. 411, 219 S.W.3d 697 (2005).

Waiver of Right to Counsel.

Motion to suppress should not have been granted based on subsection (g) of this section, which disallows waiver of right to counsel by juveniles in DHS custody, because subsection (g) is only applicable in juvenile proceedings; in this case, appellee, a juvenile, was charged as an adult after making the statement. It is the court in which the juvenile is ultimately charged and tried that determines whether the statutory protections apply. *State v. Griffin*, 2017 Ark. 67, 513 S.W.3d 828 (2017).

Cited: *Mulling v. Mulling*, 323 Ark. 88, 912 S.W.2d 934 (1996); *Kennedy v. State*, 325 Ark. 3, 923 S.W.2d 274 (1996); *Carter v. State*, 326 Ark. 497, 932 S.W.2d 324 (1996); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997); *Jordan v. State*, 356 Ark. 248, 147 S.W.3d 691 (2004); *Holland v. State*, 365 Ark. 55, 225 S.W.3d 353 (2006).

9-27-318. Filing and transfer to criminal division of circuit court.

(a) The state may proceed with a case as a delinquency only when the case involves a juvenile:

(1) Fifteen (15) years of age or younger when the alleged delinquent act occurred, except as provided by subdivision (c)(2) of this section; or

(2) Less than eighteen (18) years of age when he or she engages in conduct that if committed by an adult would be any misdemeanor.

(b) The state may file a motion in the juvenile division of circuit court to transfer a case to the criminal division of circuit court or to designate a juvenile as an extended juvenile jurisdiction offender when a case involves a juvenile:

(1) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that if committed by an adult would be:

(A) Murder in the second degree, § 5-10-103;

(B) Battery in the second degree in violation of § 5-13-202(a)(2), (3), or (4);

(C) Possession of a handgun on school property, § 5-73-119(b)(1)(A);

(D) Aggravated assault, § 5-13-204;

(E) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(F) Any felony committed while armed with a firearm;

(G) Soliciting a minor to join a criminal street gang, § 5-74-203;

(H) Criminal use of prohibited weapons, § 5-73-104;

(I) First degree escape, § 5-54-110;

(J) Second degree escape, § 5-54-111; or

(K) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Murder in the second degree, § 5-10-103;

(iv) Kidnapping, § 5-11-102;

(v) Aggravated robbery, § 5-12-103;

(vi) Rape, § 5-14-103;

(vii) Battery in the first degree, § 5-13-201;

(viii) First degree escape, § 5-54-110; and

(ix) Second degree escape, § 5-54-111;

(2) At least fourteen (14) years old when he or she engages in conduct that constitutes a felony under § 5-73-119(a); or

(3) At least fourteen (14) years old when he or she engages in conduct that, if committed by an adult, constitutes a felony and who has, within the preceding two (2) years, three (3) times been adjudicated as a delinquent juvenile for acts that would have constituted felonies if they had been committed by an adult.

(c) A prosecuting attorney may charge a juvenile in either the juvenile or criminal division of circuit court when a case involves a juvenile:

(1) At least sixteen (16) years old when he or she engages in conduct that, if committed by an adult, would be any felony; or

(2) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that, if committed by an adult, would be:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Kidnapping, § 5-11-102;

(D) Aggravated robbery, § 5-12-103;

(E) Rape, § 5-14-103;

(F) Battery in the first degree, § 5-13-201; or

(G) Terroristic act, § 5-13-310.

(d) If a prosecuting attorney can file charges in the criminal division of circuit court for an act allegedly committed by a juvenile, the state may file any other criminal charges that arise out of the same act or course of conduct in the same division of the circuit court case if, after a hearing before the juvenile division of circuit court, a transfer is so ordered.

(e) Upon the motion of the court or of any party, the judge of the division of circuit court in which a delinquency petition or criminal charges have been filed shall conduct a transfer hearing to determine whether to transfer the case to another division of circuit court.

(f) The court shall conduct a transfer hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days from the date of the motion to transfer the case.

(g) In the transfer hearing, the court shall consider all of the following factors:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;

(5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;

(6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

(7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;

(8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

(9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(10) Any other factors deemed relevant by the judge.

(h)(1) The court shall make written findings on all of the factors set forth in subsection (g) of this section.

(2) Upon a finding by clear and convincing evidence that a case should be transferred to another division of circuit court, the judge shall enter an order to that effect.

(i) Upon a finding by the criminal division of circuit court that a juvenile fourteen (14) through seventeen (17) years of age and charged with the crimes in subdivision (c)(2) of this section should be transferred to the juvenile division of circuit court, the criminal division of circuit court may enter an order to transfer as an extended juvenile jurisdiction case.

(j) If a juvenile fourteen (14) or fifteen (15) years of age is found guilty in the criminal division of circuit court for an offense other than an offense listed in subsection (b) or subdivision (c)(2) of this section, the judge shall enter a juvenile delinquency disposition under § 9-27-330.

(k) If the case is transferred to another division, any bail or appearance bond given for the appearance of the juvenile shall continue in effect in the division to which the case is transferred.

(l) Any party may appeal from a transfer order.

(m) The circuit court may conduct a transfer hearing and an extended juvenile jurisdiction hearing under § 9-27-503 at the same time.

History. Acts 1989, No. 273, § 17; 1991, No. 903, § 1; 1993, No. 1189, § 5; 1994 (2nd Ex. Sess.), No. 39, § 1; 1994 (2nd Ex. Sess.), No. 40, § 1; 1995, No. 797, § 1; 1997, No. 1229, § 7; 1997, No. 1299, § 7; 1999, No. 1192, § 16; 2001, No. 1582, § 2; 2003, No. 1166, § 10; 2003, No. 1809, § 3.

Publisher's Notes. Acts 1993, No. 1189, § 1, provided: "(a) The General Assembly of the State of Arkansas finds that the State of Arkansas is experiencing an

increase in violent crime committed by school age juveniles and the growth of street gangs made up largely of school age juveniles. The General Assembly of the State of Arkansas further finds that the number of school related crimes is increasing.

"(b) It is the intent of the General Assembly of the State of Arkansas to insure the safest possible learning environment for our students, teachers and other school employees."

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CASE NOTES

ANALYSIS

Constitutionality.

In General.

Construction.

Applicability.

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—In General.

—Equal Weight Not Required.

—Intellectual Disability.

—Multiple Factors.

—Other Factors.

—Seriousness of Offense.

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—Written Findings.

Jurisdiction.

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Timely Hearing.

Transfer to Criminal Division Allowed.

Transfer to Juvenile Division Denied.

Constitutionality.

Subsection (c) of this section — which grants the prosecuting attorney, when a case involves a juvenile sixteen years of age or older at the time of the commission of a felony offense, “discretion to file a petition in juvenile court alleging delinquency or to file charges in circuit court and to prosecute as an adult” — does not violate federal and state constitutional guarantees of due process and equal protection. *Beck v. State*, 317 Ark. 154, 876 S.W.2d 561 (1994).

Court properly denied appellant’s motion to declare this section unconstitutional because he failed to demonstrate that the statute was arbitrary or irrational; appellant lacked standing to challenge the constitutionality of the sentencing authorized by this section because there had been no formal adjudication of guilt and appellant had not been sentenced. *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004).

This section, which vested prosecutors with the discretion to bring felony charges against 16-year-olds in the criminal divi-

sions of circuit courts, was substantive law and not a rule of pleading, practice, and procedure; therefore, it did not violate separation of powers under Ark. Const. Art. 4, §§ 1, 2. Also, subsection (c) of this section did not deny a juvenile equal protection of the law because treatment as a juvenile was not an inherent right and could be modified by the legislature. *C.B. v. State*, 2012 Ark. 220, 406 S.W.3d 796 (2012).

In General.

The operation of this section underscores the importance of the prosecutor’s choice in charging because the General Assembly has not based court assignment in juvenile cases upon the nature of the offense committed but upon what the prosecutor chooses to charge. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

A juvenile court does not have authority to sua sponte transfer a case to the circuit court. *Chavez v. State*, 71 Ark. App. 29, 25 S.W.3d 431 (2000).

Construction.

The plain meaning of the words “the prosecuting attorney has the discretion to file ... in circuit court and to prosecute as an adult” in subsection (c) of this section, is that when the prosecutor chooses to prosecute a juvenile in circuit court as an adult, the juvenile becomes subject to the procedures and penalties prescribed for adults. *Boyd v. State*, 313 Ark. 171, 853 S.W.2d 263 (1993).

The “case” transferred, within the meaning of this section, includes a direct transfer of a first-degree battery charge to the juvenile court. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

The statutes of the juvenile court clearly support the conclusion that a direct transfer of a case is effected by a transfer order. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

Although commission of a felony while armed with a firearm is a basis of concurrent jurisdiction of a circuit court over a juvenile, it is not one of the factors to be considered in making the transfer decision; subsection (e) (now (g)) of this section provides the factors to be considered. *Green v. State*, 323 Ark. 635, 916 S.W.2d 756 (1996).

It is not necessary for the trial court to give equal weight to each of the factors in subsection (e) (now (g)) of this section. *Miller v. State*, 328 Ark. 121, 942 S.W.2d 825 (1997).

Applicability.

Where juvenile had been arrested on a circuit court felony bench warrant, but neither the abstract nor transcript showed a copy of an indictment or information setting out the felony offenses with which the juvenile was charged, the juvenile had not been charged with a felony in circuit court as an adult when the law officers interrogated him and gained his confession; thus, the Juvenile Code was applicable at the time juvenile gave his statement, and his statement was therefore inadmissible at trial because the law enforcement officer's conduct failed to comport with required Juvenile Code procedures when they obtained juvenile's confession. *Rhoades v. State*, 315 Ark. 658, 869 S.W.2d 698 (1994).

The circuit court did not have jurisdiction to try the defendant for second-degree battery whether he was 14 or 15 years old since second-degree battery was not an enumerated offense. *Jones v. State*, 333 Ark. 208, 969 S.W.2d 618 (1998).

Age of Juvenile.

Jurisdiction of the juvenile court is exclusive and original with respect to all offenses charged against a juvenile who is 14 years old at the time of the commission of those offenses, with the exception of certain offenses enumerated in subdivision (b)(1) of this section; the same law applies to juveniles who are 15 years old at the time of the commission of the alleged offenses. *State v. Gray*, 319 Ark. 356, 891 S.W.2d 376 (1995).

Transfer properly denied where juvenile, charged with committing theft nine days before turning 18, had committed the prior crimes of theft, battery, and aggravated robbery, had violated probation, and where the juvenile was too close to age 19 and therefore ineligible under § 9-28-208 to be committed to the Division of Youth Services. *Brown v. State*, 330 Ark. 518, 954 S.W.2d 276 (1997).

Eighteen-year-old defendant seeking transfer to juvenile court argued that because he was seventeen when the alleged offenses occurred, he could be adjudicated

delinquent and kept under the watchful eyes of the court until his twenty-first birthday; such argument was held unpersuasive when charges of serious and violent felony offenses remained to be adjudicated and the defendant was already eighteen years of age at the time of the hearing on the motion to transfer. *Brown v. State*, 330 Ark. 603, 954 S.W.2d 273 (1997).

Appellate Review.

In juvenile transfer cases, the standard of review on appeal is no longer abuse of discretion. Acts 1989, No. 273 requires the trial court to support a juvenile transfer decision by a finding of clear and convincing evidence; consequently, findings of fact by the trial court will not be set aside unless clearly erroneous. *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991).

The standard of review in juvenile transfer cases is whether the trial judge's finding is clearly against the preponderance of the evidence, and findings of fact by the trial court will not be set aside unless clearly erroneous. *Smith v. State*, 307 Ark. 223, 818 S.W.2d 945 (1991); *Slay v. State*, 309 Ark. 507, 832 S.W.2d 217 (1992).

The standard for review is whether the circuit court's denial of a transfer was clearly erroneous. *Vickers v. State*, 307 Ark. 298, 819 S.W.2d 13 (1991); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

The appellate court will not reverse a circuit court's denial of a motion to transfer a case to juvenile court unless it determines the denial was clearly erroneous. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993); *Hansen v. State*, 323 Ark. 407, 914 S.W.2d 737 (1996); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Where defendant argued that the hearing on his motion to transfer this matter to juvenile court did not meet the due process standards required by this section, but failed to include a transcript of the juvenile transfer hearing in the record, the appellate court had to assume that the trial court ruled correctly based on the arguments and testimony presented. *Tucker v. State*, 313 Ark. 624, 855 S.W.2d 948 (1993), overruled in part, *Misildine v. State*, 314 Ark. 500, 863 S.W.2d 813 (1993).

On appeal of a decision to retain jurisdiction or transfer a case to the juvenile court, the trial court's findings will not be reversed unless clearly erroneous. *Porter v. State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

Where an interlocutory appeal is permitted by subsection (h) (now l)) of this section, jurisdiction is properly in the Supreme Court under S. Ct. & Ct. App. Rule 1-2(a). *Sebastian v. State*, 318 Ark. 494, 885 S.W.2d 882 (1994).

A juvenile cannot challenge transfer orders on direct appeal from a judgment of conviction in the circuit court. *Hamilton v. State*, 320 Ark. 346, 896 S.W.2d 877 (1995).

For criminal prosecutions commenced after May 1, 1995, an appeal from an order granting or denying transfer of a case from one court to another having jurisdiction over juvenile matters must be considered by way of interlocutory appeal, and an appeal from such an order after a judgment of conviction in circuit court is untimely and will not be considered. *Hamilton v. State*, 320 Ark. 346, 896 S.W.2d 877 (1995).

Meaningful review of the trial court's denial of a motion to transfer is impossible without a record of the hearing, and it is the appellant's duty to produce such a record. *Miller v. State*, 328 Ark. 121, 942 S.W.2d 825 (1997).

Motion for belated appeal was remanded for the circuit court to determine whether defendant requested either of his attorneys to file an appeal of an order denying the transfer of the cause against him to juvenile court on his behalf before the deadline for notice of appeal and, if such a request was made to either attorney, whether that attorney admitted fault for not timely filing the notice of appeal. *Bryant v. State*, 359 Ark. 244, 195 S.W.3d 924 (2004).

Denial of defendant's motion to transfer his case to the juvenile division of the lower court was upheld as defendant abandoned the sufficiency of the argument relating to the trial court's decision to deny his transfer, and the appellate court refused to consider defendant's arguments challenging the constitutionality of this section because they were not made in conjunction with a valid interlocutory claim. *Barton v. State*, 96 Ark. App. 23, 237 S.W.3d 512 (2006).

Court's declaration of extended juvenile jurisdiction was in error as was the resulting sentence that committed the juvenile to the Department of Corrections for a term of three years, because the juvenile was not charged with any of the statute's enumerated crimes; questions of jurisdiction may be heard on the appellate court's own motion even in the absence of an objection below. *R.B. v. State*, 2013 Ark. App. 377 (2013).

Circuit court did not err in denying defendant's motion to transfer his case to the juvenile division because, after remand, the circuit court entered an order enumerating the findings required by this section and found that, *inter alia*, the seriousness of the alleged offense of battery in the first degree required prosecution in the criminal division of circuit court; and, what defendant really sought was for the appellate court to reweigh the factors considered by the circuit court, but the appellate court would not reweigh the evidence presented to the circuit court. *McClendon v. State*, 2020 Ark. App. 217, 599 S.W.3d 668 (2020).

Burden of Proof.

A moving party's burden of proof is separate and apart from the standard of clear and convincing evidence which the trial court must find. The ultimate issue under subsection (f) (now subdivision (h)(2)) of this section is not who has the burden of proof or who must meet that burden of proof, but rather, whether the trial court finds clear and convincing evidence. *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991).

The moving party seeking to transfer a defendant from one jurisdiction to another has the burden of proof. *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

If the court finds that a juvenile should be tried as an adult, it must do so by clear and convincing evidence. *Vickers v. State*, 307 Ark. 298, 819 S.W.2d 13 (1991); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Defendant has the burden of going forward with the proof to show a transfer to juvenile court is warranted under this section. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993).

It was not necessary that proof of each factor listed in subsection (e) (now (g)) of

this section be presented or that the trial court give each factor equal weight. *Cole v. State*, 323 Ark. 136, 913 S.W.2d 779 (1996).

Defendant, as the party seeking the transfer, has the burden of proving the transfer is warranted; however, if the circuit court decides to retain jurisdiction of the juvenile's case, that decision must be supported by clear and convincing evidence. *Guy v. State*, 323 Ark. 649, 916 S.W.2d 760 (1996).

A defendant seeking a transfer has the burden of proof to show a transfer is warranted; if he or she meets the burden, then the transfer is made unless there is clear and convincing countervailing evidence to support a finding that the juvenile should remain in circuit court. *Lammers v. State*, 324 Ark. 222, 920 S.W.2d 7 (1996).

While the trial court's decision to try a juvenile as an adult must be supported by clear and convincing evidence, the court is not required to give equal weight to the statutory factors. *Majesty v. State*, 330 Ark. 416, 954 S.W.2d 245 (1997).

Trial court did not err in denying a juvenile's request to transfer his case to the juvenile division under subsection (g) of this section based on the seriousness of the crimes; the aggressive, willful manner of the crimes; that the offenses were against persons; and the juvenile's sophisticated evasion of capture and non-cooperation. The trial court properly used the clear and convincing burden of proof in deciding the juvenile's request, not the preponderance of the evidence standard applicable under § 9-27-503(b). *A.I. v. State*, 2010 Ark. App. 83 (2010).

Construction With Other Law.

Section 9-27-309(k) did not apply because the victim's sister testified about her own personal experience and did not present evidence regarding the arrest or detention of a juvenile and related proceedings; in fact, there was no reference at all to the prior juvenile proceedings during the State's case and thus, the trial court did not err in admitting the sister's testimony and denying the motion to transfer the case to juvenile court. *Gilliam v. State*, 2016 Ark. App. 434, 502 S.W.3d 558 (2016).

Duty of Court.

This section clearly delegates the responsibility for determining whether cir-

cuit or juvenile court is most appropriate to the court in which the charges were brought, and the abdication of this responsibility to the prosecutor was an abuse of the court's discretion. *Pennington v. State*, 305 Ark. 312, 807 S.W.2d 660 (1991), modified, *Bradley v. State*, 306 Ark. 621, 816 S.W.2d 605 (1991).

Evidence.

Where the trial judge relied on: (1) the seriousness of the alleged offense; (2) the fact the defendants were 16 and 17 years old; (3) one had a previous juvenile record; and (4) one shot a gun into a crowd of people, there was clear and convincing evidence that the defendants should be tried as adults. *Bradley v. State*, 306 Ark. 621, 816 S.W.2d 605 (1991).

Evidence sufficient to support a finding of clear and convincing evidence under subsection (e) (now subdivision (h)(2)) of this section. *Vickers v. State*, 307 Ark. 298, 819 S.W.2d 13 (1991); *Heagerty v. State*, 335 Ark. 520, 983 S.W.2d 908 (1998).

The evidence supporting the circuit court's refusal to transfer this case to juvenile court was clear and convincing. *Davis v. State*, 319 Ark. 613, 893 S.W.2d 768 (1995).

A court may no longer base its decision on a motion to transfer solely upon the allegations contained in the information; there must be some evidence to substantiate the serious and violent nature of the charges contained in the information. *Thompson v. State*, 330 Ark. 746, 958 S.W.2d 1 (1997).

Extended Juvenile Jurisdiction.

Designation of the juvenile for extended juvenile jurisdiction (EJJ) was proper because his contention that the law-of-the-case doctrine barred the juvenile court from conducting an extended juvenile jurisdiction hearing and granting the state's motion for such a designation was rejected. Neither the criminal division nor the appellate court provided direction concerning EJJ when the appellate court reversed with directions to transfer the case to juvenile court, and nothing required the criminal division to make a decision on the EJJ issues before the case was transferred to juvenile court. *N.D. v. State*, 2012 Ark. 265, 383 S.W.3d 396 (2012).

Circuit court did not err in not designating and disposing of defendant's case un-

der the Extended Juvenile Jurisdiction Act (EJJA), § 9-27-501 et seq., where it determined that his case was to remain in the criminal division, and EJJA designation applied only when a case was pending in the juvenile division. *Hardin v. State*, 2016 Ark. App. 178, 486 S.W.3d 808 (2016).

Extended juvenile jurisdiction did not apply as the circuit court had found that the juvenile should not be transferred to the juvenile division. *Holmes v. State*, 2019 Ark. App. 21, 569 S.W.3d 895 (2019).

Factors Considered.

The state failed to produce countervailing evidence warranting retention of the case in circuit court where the state introduced no evidence of violence, negative past history or criminal records, or any character traits which would reflect poorly on the minor's prospects for rehabilitation. *Pennington v. State*, 305 Ark. 312, 807 S.W.2d 660 (1991), modified, *Bradley v. State*, 306 Ark. 621, 816 S.W.2d 605 (1991).

A defendant's demeanor at the transfer hearing is relevant to the factor of character traits indicating a juvenile's prospects for rehabilitation. *McGaughy v. State*, 321 Ark. 537, 906 S.W.2d 671 (1995).

Trial court properly denied defendant's motion to transfer defendant's case to juvenile court after defendant was charged with being an accomplice to capital murder and being an accomplice to aggravated robbery because the trial court considered the factors in subsection (g) of this section; the evidence and testimony showed that defendant, who was 17 years old, was highly culpable. *Magana-Galdamez v. State*, 104 Ark. App. 280, 291 S.W.3d 203 (2009).

Where appellant was charged with criminal attempted rape and sexual assault in the second degree arising out of acts committed when he was 16 years of age, the trial court did not err by denying appellant's motion to transfer his criminal case to juvenile court. The age factor, the fact that rape was a serious allegation and a violent offense against a person, and appellant's prior history of sexual assault were sufficient factors under subsection (g) of this section to support the trial court's decision to retain jurisdiction. *R.F.R. v. State*, 2009 Ark. App. 583, 337 S.W.3d 547 (2009).

In a case in which defendant was charged with residential burglary, criminal mischief in the first degree, and theft arising out of acts allegedly committed two days before his seventeenth birthday, and he appealed a trial court's denial of his motion to transfer his criminal case to juvenile court, he argued unsuccessfully that the trial court's ruling that he could not be properly rehabilitated was erroneous because there was no clear and convincing evidence to support that finding, in fact there was no evidence at all on that point. In its order, the trial court addressed its concerns that rehabilitation may not be appropriate due to defendant's age and the seriousness of the offense. *D.A.S. v. State*, 2010 Ark. App. 144 (2010).

In denying appellant's motion to transfer a terroristic act and criminal mischief case to the juvenile division, a trial court was not required to give equal weight to each of the factors in subsection (g) of this section; denial of the motion was proper because appellant's own testimony established that appellant went to a rival's home, and that appellant knew that guns were being taken. *Neal v. State*, 2010 Ark. App. 744, 379 S.W.3d 634 (2010).

Circuit court did not err in denying a juvenile's motion to transfer to the juvenile division under the factors in subsection (g) of this section. The juvenile had an extensive record, and he brutally ambushed and murdered a guard before escaping from a juvenile facility and carjacking a vehicle. *C.B. v. State*, 2012 Ark. 220, 406 S.W.3d 796 (2012).

Trial court did not err in denying transfer of the juvenile's criminal case to juvenile court because it found that even if there were rehabilitative facilities available to the juvenile division, they were not likely to rehabilitate the juvenile before his 21st birthday. Additionally, although he had been offered the services of the juvenile system as a result of his commission of previous offenses, rather than comply with the juvenile court's rules, he persisted in delinquent behavior. *A.H. v. State*, 2013 Ark. App. 419 (2013).

In a juvenile case involving murder and other offenses, a circuit court did not make clearly erroneous findings with regard to the part of this section concerning culpability because there was testimony that appellant, a juvenile, acted alone in two of the cases where transfer was

sought, and he acted in concert with others in a third case. Even if he had a mental defect, the factors did not have to be weighed equally. *B.D. v. State*, 2015 Ark. App. 160, 457 S.W.3d 294 (2015).

Although a trial court's ultimate decision by denying a transfer motion was not clearly erroneous, some of the trial court's written findings bearing on this issue were unsupported by the evidence; there was no evidence that appellant, a juvenile, had been previously adjudicated a juvenile offender, the only evidence on his sophistication or maturity level was his mother's testimony that he was childish and immature, and there were no reports relating to his mental, physical, educational, or social history. The appellate court was unable to tell how much weight the trial court gave to the seriousness and violent nature of the offense. *Z.T. v. State*, 2015 Ark. App. 282 (2015).

Trial court was not clearly erroneous in denying defendant's motion to transfer his case to juvenile court, where he was charged with being an accomplice to aggravated robbery and first-degree battery; the court took defendant's 66-point IQ into consideration, defendant conceded that the crimes were serious and violent in nature and they were committed against a person by a group of people, and he had been placed on juvenile probation on two occasions and had that probation revoked both times. *Nichols v. State*, 2015 Ark. App. 397, 466 S.W.3d 431 (2015).

In a case in which defendant juvenile was charged with capital murder, aggravated robbery, and two counts of committing a terroristic act, the circuit court's denial of defendant's motion to transfer the case to the juvenile division was not clearly erroneous. The circuit court considered all the evidence on all the factors, as required by subsection (g) of this section, and it was free to use its discretion in the weight afforded to each factor. *Brown v. State*, 2016 Ark. App. 254, 492 S.W.3d 126 (2016).

Trial court did not clearly err in finding that the protection of society justified prosecution of defendant juvenile in the criminal division, given that defendant was charged with capital murder and aggravated robbery, and the victim was robbed by gunpoint and then shot three times, two from behind. *Harris v. State*,

2016 Ark. App. 293, 493 S.W.3d 808 (2016).

Trial court did not clearly err in finding that defendant juvenile's previous criminal history justified prosecution in the criminal division, as defendant had been involved in a fight at a rival school, had to be removed from the scene, and while being removed, he threatened to return with a gun and shoot people. *Harris v. State*, 2016 Ark. App. 293, 493 S.W.3d 808 (2016).

Trial court did not clearly err in finding that defendant juvenile could not be rehabilitated and should be tried as an adult; a coordinator for the Department of Youth Services testified that many of the programs were not available to defendant due to his age, and that he would have only a little more than a year to review defendant's progress and make a recommendation as to whether he should be sentenced as an adult. *Harris v. State*, 2016 Ark. App. 293, 493 S.W.3d 808 (2016).

Circuit court properly transferred a juvenile's case to the criminal division of the circuit court because he was 17 years old at the time of the charged offenses, had prior contact with juvenile court, had violated probation, had been committed to the Department of Youth Services, the alleged burglary involved a firearm, the victims were an elderly couple who were injured during its commission, and the juvenile knew the victims prior to the burglary. *R.J.W. v. State*, 2017 Ark. App. 382 (2017).

Circuit court noted defendant's issues with his mother and schooling, but an atypical home life did not preclude the court's finding that he exhibited a normal level of sophistication and maturity for a 17-year-old. *Randof v. State*, 2018 Ark. App. 441, 559 S.W.3d 307 (2018).

Trial court did not clearly err in denying defendant's motion to transfer his three cases to the juvenile division because the trial court considered and made written findings on each required factor, it considered a clinical therapist's testimony and specifically found that defendant could benefit from continued therapy, and during counsel's examination of the therapist, the trial court asked her specific questions about her opinion regarding the propriety of the juvenile versus the adult division of

the court. *Jones v. State*, 2019 Ark. App. 59, 569 S.W.3d 367 (2019).

Circuit court properly denied defendant's motion to transfer his case to the juvenile division of the circuit court because he was 15 years old when he fired at least 17 shots into a car seriously injuring two of the three occupants, defendant confessed to the shooting, had a previous adjudication in juvenile court for disorderly conduct, and had multiple suspensions from school, and the circuit court made written findings on all the statutory factors. *Scott v. State*, 2020 Ark. App. 15, 592 S.W.3d 715 (2020).

—In General.

There was no requirement in former statute that equal weight be given to each factor, or that proof on all factors must be against the defendants in order for the court to retain jurisdiction. *Ashing v. State*, 288 Ark. 75, 702 S.W.2d 20 (1986) (decision under prior law); *Slay v. State*, 309 Ark. 507, 832 S.W.2d 217 (1992).

The factors to be considered in deciding whether to transfer a case to juvenile court are the seriousness of the alleged offense, whether violence was allegedly used, and whether the alleged offense is part of a pattern of adjudicated offenses, along with the prior history, character traits, mental maturity, and any other factors that reflect upon the juvenile's prospects for rehabilitation. *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

It is not necessary to give equal weight to each factor in juvenile transfer cases; further, proof need not be introduced against the juvenile on each factor. *Hogan v. State*, 311 Ark. 262, 843 S.W.2d 830 (1992); *Macon v. State*, 323 Ark. 498, 915 S.W.2d 273 (1996); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

A trial court must evaluate the specific offense and the individual defendant to determine whether a transfer is warranted. *Fleetwood v. State*, 329 Ark. 327, 947 S.W.2d 387 (1997).

The denial of the motion to transfer was not improper because there was an affirmative defense of self-defense; the statutory scheme for determining whether a case should be transferred to juvenile court is not dependent upon affirmative defenses. *Fleetwood v. State*, 329 Ark. 327, 947 S.W.2d 387 (1997).

It was proper for a court to consider an allegedly involuntary confession at a juvenile transfer hearing. *Witherspoon v. State*, 74 Ark. App. 151, 46 S.W.3d 549 (2001).

—Equal Weight Not Required.

There is no requirement that every element mentioned in this section be given equal weight. *Holland v. State*, 311 Ark. 494, 844 S.W.2d 943 (1993).

The court need not give equal weight to each factor in subsection (e) (now (g)) of this section in considering juvenile transfer cases, and it is permissible to give substantial weight to the information. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

In making a determination whether to retain jurisdiction or to transfer a case to the juvenile court, the court is not required to give equal weight to the statutory factors in subsection (e) (now (g)) of this section, nor is the prosecutor required to introduce proof against the juvenile with regard to each factor. *Porter v. State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

The court is not required to give each factor under subsection (e) (now (g)) of this section equal weight or force. *Walter v. State*, 317 Ark. 274, 878 S.W.2d 374 (1994).

In deciding whether to transfer a case from circuit to juvenile court, the trial court is not required to give every factor equal weight, and proof on every factor need not be introduced in order to warrant keeping a case in circuit court. *Johnson v. State*, 317 Ark. 521, 878 S.W.2d 758 (1994).

Trial court is not required to give equal weight to each of the factors in subsection (g) of this section, and a juvenile's lack of maturity, standing alone, does not mandate transfer to a juvenile division. *Richardson v. State*, 97 Ark. App. 52, 244 S.W.3d 736 (2006).

In a case in which defendant was charged with residential burglary, criminal mischief in the first degree, and theft arising out of acts allegedly committed two days before his seventeenth birthday, and he appealed a trial court's denial of his motion to transfer his criminal case to juvenile court, he argued unsuccessfully

that the trial court did not properly weigh the factors because it should have given more weight to the fact that defendant had no prior criminal or juvenile history. The trial court specifically addressed the required factors in its decision denying defendant's motion to transfer; it was not required to give equal weight to each of the statutory factors, and it could use its discretion in deciding the weight to be afforded to each factor. *D.A.S. v. State*, 2010 Ark. App. 144 (2010).

—Intellectual Disability.

Circuit court properly denied defendant's motion to transfer his case to the juvenile division or to extend juvenile jurisdiction where it considered the evidence related to his intellectual disabilities, concluded from that evidence that he nonetheless had the ability to plan crimes and was street smart, considered his educational history and teacher evaluations, and concluded from that evidence that he was aware of the difference between right and wrong and understood that his actions had consequences. *Nelson v. State*, 2016 Ark. App. 148, 485 S.W.3d 284 (2016).

—Multiple Factors.

Trial court's decision that juvenile should be tried as an adult was clearly erroneous and against the preponderance of the evidence where juvenile had no prior record and there was no violence connected with his offense of possessing cocaine; to hold otherwise would be to allow the trial court to simply categorize all felonies as serious and utilize this reason alone to retain jurisdiction, rather than transfer the case based on consideration of all the statutory factors. *Blevins v. State*, 308 Ark. 613, 826 S.W.2d 265 (1992).

Where the circuit judge properly considered each of the three factors outlined in subsection (e) (now (g)) of this section and determined that there was violence employed in the commission of the offenses, defendant had a repetitive pattern of adjudicated offenses, and that based on defendant's character traits rehabilitation would not work, and defendant failed to offer any proof in his favor, the circuit judge properly determined the aggravated robbery charges should be tried in circuit court. *Williams v. State*, 313 Ark. 451, 856 S.W.2d 4 (1993).

Transfer to juvenile court denied based on charge of first-degree murder, defendant's criminal history in the juvenile division, and the failed attempts at rehabilitation. *Jones v. State*, 326 Ark. 681, 933 S.W.2d 387 (1996).

In a prosecution for delivery of controlled substances, the circuit court properly retained jurisdiction given: (1) the seriousness of the alleged offense; (2) a prior adjudication for two offenses that would have been felonies if committed by an adult; (3) previous treatment under the juvenile justice system followed by violation of probation conditions; (4) failure to attend school or obtain a GED; and (5) impossibility of future rehabilitation with the Division of Youth Services due to defendant's age. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

The trial court's decision to deny a motion to transfer a criminal case to juvenile court was supported by clear and convincing evidence where the defendant was almost 19 years old, an officer testified that the defendant participated in a serious offense, that the victim was held at gunpoint, and that the defendant's mother confirmed that he had a prior history of criminal acts. *Rhodes v. State*, 332 Ark. 516, 967 S.W.2d 550 (1998).

Circuit court properly denied defendant's motion to transfer his case to the juvenile division of circuit court; while he was between the ages of 12 and 15 years old when the alleged rape occurred, he was 20 years old when the charges were first brought against him and by the time he filed his amended transfer motion, he had already turned 21, the victim was between the ages of three and six, the rape involved a continuous course of abuse, rape was a crime of force and violence, there was evidence that the acts were willful and premeditated, and there were no programs or facilities available to rehabilitate defendant due to his current age. *Byrd v. State*, 2018 Ark. App. 2 (2018).

Trial court did not clearly err in granting the State's motion to transfer a juvenile's case because, even assuming that the trial court erred in finding there were no programs available through the juvenile court to rehabilitate the juvenile, it was for the trial court to determine the weight of each statutory factor, and several other factors weighed in favor of

transferring the juvenile's case to the trial court's criminal division. *N.R. v. State*, 2020 Ark. App. 71 (2020).

—Other Factors.

Even though record indicated juvenile defendant had no prior adjudicated offenses, the trial court could properly consider testimony concerning his subsequent conviction for possession of a firearm, for which he was committed to the Youth Services Center, as a reason to deny transfer. *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

On a motion to transfer to juvenile court, the circuit court did not err in considering evidence that the defendant may have been an accomplice in an unrelated murder trial. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

—Seriousness of Offense.

The serious and violent nature of an offense is a sufficient basis for trying a juvenile as an adult. *Holland v. State*, 311 Ark. 494, 844 S.W.2d 943 (1993); *Ray v. State*, 65 Ark. App. 209, 987 S.W.2d 738 (1999).

While the use of violence in committing a serious offense is a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile, the commission of a serious offense without the use of violence is not a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile. *Sebastian v. State*, 318 Ark. 494, 885 S.W.2d 882 (1994); *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

While the commission of a serious offense alone, without the use of violence, is not sufficient for a circuit court to retain jurisdiction of a juvenile, the trial court may rely on the violent nature of a crime in denying a motion to transfer to juvenile court. *Cole v. State*, 323 Ark. 136, 913 S.W.2d 779 (1996).

Seriousness alone is not a sufficient basis to refuse a transfer; the factor in subdivision (e)(1) (now (g)(1)) of this section may not form the basis of refusal to transfer absent a finding that "violence was employed." *Green v. State*, 323 Ark. 635, 916 S.W.2d 756 (1996).

No element of violence beyond that required to commit the crime is necessary under subdivision (e)(1) (now (g)(1)) of this section; however, that a crime is serious

without the use of violence is not a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile. *Lammers v. State*, 324 Ark. 222, 920 S.W.2d 7 (1996).

The serious and violent nature of an offense is a sufficient basis for denying a motion to transfer and trying a juvenile as an adult. *Lammers v. State*, 324 Ark. 222, 920 S.W.2d 7 (1996).

Transfer denied where 17-year-old defendant was charged with aggravated assault and terroristic threatening because of defendant's age and because those offenses are of a serious and violent nature. *Sanders v. State*, 326 Ark. 415, 932 S.W.2d 315 (1996).

Transfer was appropriately denied because of the serious nature of the crimes charged, and the use of violence in the commission of the serious offenses. *Toliver v. State*, 330 Ark. 488, 953 S.W.2d 887 (1997).

Trial court's denial of a transfer of a rape case to juvenile court was not clearly erroneous. Although some of the factors in this section favored juvenile jurisdiction, the factors were weighed against those that supported jurisdiction in the criminal division of the circuit court. Appellant, a juvenile, repeatedly raped his 10-year-old stepbrother over the course of a year, and a juvenile can be tried as an adult solely because of the serious and violent nature of the offense. *Kiser v. State*, 2016 Ark. App. 198, 487 S.W.3d 374 (2016).

Juvenile may be tried as an adult solely because of the serious and violent nature of the offense. *Brown v. State*, 2016 Ark. App. 254, 492 S.W.3d 126 (2016).

Trial court did not clearly err by denying defendant's motion to transfer his case to the juvenile division because he could be tried as an adult solely because the trial court found that capital murder was a serious offense, there was evidence that defendant planned and participated in the victim's death either as the shooter or the driver of the getaway car, and evidence supported the trial court's finding that defendant had a high level of sophistication and maturity. *Donson v. State*, 2019 Ark. App. 459, 588 S.W.3d 84 (2019).

—Violent Offense.

Rape is, by definition, a violent offense, and such a charge is sufficient to meet the requirements set out in subdivision (e)(1)

(now (g)(1)) of this section for denial of transfer to juvenile court. *Slay v. State*, 309 Ark. 507, 832 S.W.2d 217 (1992); *Davis v. State*, 319 Ark. 613, 893 S.W.2d 768 (1995); *Ring v. State*, 320 Ark. 128, 894 S.W.2d 944 (1995).

The use of violence in committing a serious offense is a factor sufficient in and of itself for a circuit court to retain jurisdiction of a juvenile; it is of no consequence that the juvenile may or may not have personally used a weapon, as his association with the use of a weapon in the course of the crimes is sufficient to satisfy the violence criterion. *Guy v. State*, 323 Ark. 649, 916 S.W.2d 760 (1996).

Even though defendant may not have held a gun in each of three robberies with which he was charged, his association with the use of a weapon in the course of the crimes was sufficient to satisfy the violence criterion of this section. *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Transfer of juvenile charged with criminal mischief for throwing a glass bottle at a moving vehicle from a moving vehicle denied because criminal mischief is a Class C felony that satisfies the seriousness criterion of subsection (e) (now (g)) of this section and because violence was employed in the commission of the offense. *Maddox v. State*, 326 Ark. 515, 931 S.W.2d 438 (1996).

Court properly denied appellant's motion to transfer to juvenile court after appellant was charged with capital murder when he was 14 years old because there was clear and convincing evidence that appellant should be tried as an adult; the offense was of a serious and violent nature. *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004).

Trial court properly denied defendant's motions to transfer his case to the juvenile division and for extended juvenile jurisdiction where defendant, when he was almost 18 years of age, deliberately carried large pieces of concrete from below a viaduct to a protected niche and hurled them at oncoming traffic, killing one driver as a result; the need to protect society from lethal acts of violence directed against complete strangers for the sole purpose of providing amusement to the perpetrator was manifest. *Richardson v. State*, 97 Ark. App. 52, 244 S.W.3d 736 (2006).

—Written Findings.

The appellant's failure to object to the absence of written findings precluded consideration of the point on appeal. *Box v. State*, 71 Ark. App. 403, 30 S.W.3d 754 (2000) (decision under prior law).

Where appellant was charged with criminal attempted rape and sexual assault in the second degree, the trial court denied his motion to transfer his criminal case to juvenile court without making written findings on all of the factors set forth in subsection (g) of this section. Because appellant never made the argument of noncompliance with the mandatory statutory provisions to the trial court or the appellate court, the argument was waived. *R.F.R. v. State*, 2009 Ark. App. 583, 337 S.W.3d 547 (2009) (decision under prior law).

Trial court's denial of defendant's motion to transfer his case to the court's juvenile division was remanded because the court did not make required written findings on all 10 statutory factors; further, a case holding that an argument on this basis is waived if not raised in the circuit court was decided before the Legislature added subdivision (h)(1) to this section in 2003. *McClendon v. State*, 2019 Ark. App. 115, 572 S.W.3d 443 (2019).

Trial court did not rely solely on the serious and violent nature of the offenses as charged, and there was ample proof to support a finding that jurisdiction could be retained in the criminal division of circuit court, because the State presented evidence that the victim had been shot in his torso and hand, that defendant juvenile had lifted his shirt to show the victim he did not have a gun before others shot him, and that he had physically assaulted the victim on a prior recent occasion. *Spears v. State*, 2019 Ark. App. 576, 591 S.W.3d 803 (2019).

Trial court's observation from the bench did not result in reversible error because the trial court stated only that defendant juvenile, who was charged with accomplice to first-degree battery, *could* be charged as an accomplice to attempted murder, and that comment was not made part of the trial court's written findings in support of its denial of defendant's transfer motion. *Spears v. State*, 2019 Ark. App. 576, 591 S.W.3d 803 (2019).

Some of the trial court's written findings in its order denying defendant juve-

nile's motion to transfer to juvenile court were unsupported by the competent evidence because they were inconsistent with the proof presented at the hearing; therefore, its order denying the motion was reversed, and the case was remanded with instructions to reconsider the transfer motion, giving proper consideration to only the competent proof presented at the transfer hearing. *Spears v. State*, 2019 Ark. App. 576, 591 S.W.3d 803 (2019).

Jurisdiction.

Former statute, when construed with the rest of the Arkansas Juvenile Code, did not require that all juveniles under 18 years of age be charged and tried for criminal acts in juvenile court; a prosecuting attorney had discretion to charge juveniles over 15 years of age in juvenile, municipal, or circuit court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

The juvenile court has exclusive jurisdiction of all of the offenses charged against a juvenile, with the exception of those listed in subdivision (b)(1) of this section. *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991); *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Where a juvenile was charged with four offenses, only one of which, aggravated robbery, was listed in this section, the circuit court should have dismissed the other three offenses not listed in subdivision (b)(1) of this section for lack of jurisdiction. *Banks v. State*, 306 Ark. 273, 813 S.W.2d 256 (1991).

The General Assembly has not based court assignment in juvenile cases upon the nature of the offense committed but upon what the prosecutor chooses to charge. *Walker v. State*, 309 Ark. 23, 827 S.W.2d 637 (1992).

Where the circuit court acquired jurisdiction over a juvenile, criminal defendant, upon the filing of a first degree murder charge, it retained jurisdiction to convict and sentence for the lesser included offense of manslaughter. *Walker v. State*, 309 Ark. 23, 827 S.W.2d 637 (1992).

The court's decision to retain jurisdiction was not clearly erroneous or clearly against the preponderance of the evidence. *Holland v. State*, 311 Ark. 494, 844 S.W.2d 943 (1993).

Where the circuit court ordered defendant's case transferred to the juvenile

division, noting defendant had no record of violence, but the juvenile division judge declined to accept the case and issued an order refusing jurisdiction, that order effectively denied transfer of defendant's case, and the state should have appealed from the order if it desired to challenge the juvenile judge's decision. *State v. Hutton*, 315 Ark. 583, 868 S.W.2d 492 (1994).

Until a proper charging instrument (information or indictment) is filed by the state in a juvenile matter, the circuit court simply has no authority to proceed, much less rule on a transfer motion under this section. *Whitehead v. State*, 316 Ark. 563, 873 S.W.2d 800 (1994).

Where the state never filed a felony charge by information or indictment against a transferred juvenile, the circuit court had no authority to conduct a hearing under this section. *Whitehead v. State*, 316 Ark. 563, 873 S.W.2d 800 (1994).

The jurisdiction of the juvenile court is exclusive and original with respect to all offenses charged against a juvenile who is aged 14 years at the time of the commission of those offenses, with the exception of those offenses enumerated in subdivision (b)(1) of this section. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

What the prosecutor chooses to charge in the circuit court with respect to a juvenile is not necessarily determinative of the forum for trial; that decision rests with the circuit court. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

The circuit court's in personam jurisdiction of a juvenile, once surrendered pursuant to a valid hearing on the motion to transfer, may not be reconferred upon the transferor court simply by the state's unilateral action of there refiled its charges against that juvenile. *Webb v. State*, 318 Ark. 581, 886 S.W.2d 624 (1994).

Three theft charges against juvenile dismissed; since the charges were not among those enumerated in subdivision (b)(1) of this section, and since the prosecutor did not file the charges in juvenile court and then move to transfer them to circuit court, the circuit court never had jurisdiction of those charges. *Butler v. State*, 324 Ark. 476, 922 S.W.2d 685 (1996).

Where the information charged the defendant with a class C felony, jurisdiction was appropriate in circuit court. *Jensen v.*

State, 328 Ark. 349, 944 S.W.2d 820 (1997).

Trial court properly transferred burglary and theft-of-property charges to juvenile court while retaining jurisdiction of an aggravated robbery charge. *Sims v. State*, 329 Ark. 350, 947 S.W.2d 376 (1997).

The circuit court had no jurisdiction to try defendant for a theft charge where the alleged act was committed while defendant was 15 years of age. *Rice v. State*, 330 Ark. 257, 954 S.W.2d 216 (1997).

Circuit court found that defendant should not be transferred to the juvenile division; therefore, extended juvenile jurisdiction was not applicable. *Lofton v. State*, 2009 Ark. 341, 321 S.W.3d 255 (2009).

As the criminal division of the circuit court lost its exclusive jurisdiction over a juvenile's case when it transferred the case to the juvenile division pursuant to this section, the criminal division lacked authority to later set aside its transfer order, and that order was a nullity. *C.H. v. State*, 2010 Ark. 279, 365 S.W.3d 879 (2010).

Inmate was not entitled to habeas corpus relief because a trial court did not lack jurisdiction over a rape case; pursuant to subdivision (c)(1) of this section, the inmate could have been tried in an adult court because he was over the age of 16. *Ashby v. State*, 2012 Ark. 48 (2012).

Misdemeanors defendant juvenile was charged with in the criminal division of the circuit court had to be dismissed because the circuit court did not have jurisdiction of the misdemeanor charges. *K.O.P. v. State*, 2013 Ark. App. 667 (2013).

Under this section, a 15-year-old could be charged in circuit court for certain offenses, but not theft of property or aggravated assault, and because the trial court never had jurisdiction of these two charges, they were dismissed without prejudice. *V.S. v. State*, 2015 Ark. App. 433, 468 S.W.3d 311 (2015).

Municipal Court.

There is no statutory authority for a transfer from juvenile court to municipal court. *J.B. v. State*, 309 Ark. 70, 827 S.W.2d 144 (1992).

Procedure.

On motion to transfer charges to juvenile court, even though the circuit court

did not follow the usual procedure in allowing the defendant to present evidence first, where the defendant did not object to the procedure but instead participated in the hearing without objection, there was no error. *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997).

In a hearing on motions to transfer a case to juvenile court under this section, to dismiss the case, and to declare the transfer statute unconstitutional, the circuit court abused its discretion by not excluding the testimony of two key witnesses because the state blatantly violated Ark. R. Crim. P. 17.1(a) by refusing to offer these witnesses' names until late in the afternoon before the hearing and, as a result, the defense did not have time to interview the two witnesses. Although the hearing was not a trial or an adjudication, the state's dilatory behavior nevertheless occurred at a pivotal point in the proceedings when the circuit court was deciding the critical issue of whether the juvenile would be tried as a juvenile or as an adult. *N.D. v. State*, 2011 Ark. 282, 383 S.W.3d 396 (2011).

Timely Hearing.

Counsel's failure to demand a transfer hearing until well beyond the 90-day period waived the right to insist on a timely hearing. *Cobbins v. State*, 306 Ark. 447, 816 S.W.2d 161 (1991).

Trial court did not lack jurisdiction for failing to hold a timely juvenile transfer hearing because the 90-day requirement was not jurisdictional; appellant, a juvenile, waived his right to insist on a timely hearing where he did not request a hearing or object to the trial court's failure to hold a hearing within 90 days. *Z.T. v. State*, 2015 Ark. App. 282 (2015).

Legislature intended the time limitations in subsections (e) and (f) of this section to commence from the date the motion to transfer is filed, rather than, as appellant contended, from the date of detention. A plain reading mandates this construction; no other construction is reasonable. *D.Q. v. State*, 2019 Ark. App. 593, 590 S.W.3d 219 (2019).

Juvenile's transfer hearing was timely held because the time period within which such a hearing had to be held as to a detained juvenile began running from the date a motion to transfer was filed. *N.R. v. State*, 2020 Ark. App. 71 (2020).

Transfer to Criminal Division Allowed.

The trial court found clear and convincing evidence on many of the factors enumerated in the statute and transfer was appropriate. *Cobbins v. State*, 306 Ark. 447, 816 S.W.2d 161 (1991); *Holmes v. State*, 322 Ark. 574, 911 S.W.2d 256 (1995).

Trial court's decision that juvenile accused of criminal mischief and burglary should be prosecuted as an adult was not clearly erroneous where, although the juvenile did not employ violence against another person, the court specifically found that the charged offenses were very serious and that the juvenile was beyond rehabilitation under existing rehabilitation programs. Additionally, over \$35,000 damage was intentionally done, the juvenile had twice before been adjudicated delinquent, and he had failed to complete the prior probation successfully. *Porter v. State*, 43 Ark. App. 110, 861 S.W.2d 122 (1993).

The chancellor did not err in transferring the case of a juvenile defendant accused of robbery to circuit court where the evidence of the statutory factors was more than sufficient. *Myers v. State*, 317 Ark. 70, 876 S.W.2d 246 (1994).

Trial court was not clearly erroneous in transferring case to circuit court, where defendant was charged with a class B felony, there were firearms involved, the offense appeared to be part of a repetitive pattern of conduct which would demonstrate that defendant was beyond the current rehabilitation available, and defendant's history, traits and maturity also reflected adversely upon his prospects for rehabilitation. *Collins v. State*, 322 Ark. 161, 908 S.W.2d 80 (1995).

In transferring appellant's case out of the juvenile division, the circuit court did not clearly err in finding that appellant had not benefited from his prior juvenile court involvement or the services he received and that his misbehavior and anger issues demonstrated a need to protect society from his persistent lawlessness, particularly gun-related lawlessness. *D.Q. v. State*, 2019 Ark. App. 593, 590 S.W.3d 219 (2019).

In a case involving theft of firearms from a hardware store, the circuit court properly granted the State's motion to transfer a 15-year-old juvenile's case to

the criminal division; although the juvenile argued that the circuit court erred when finding that the juvenile committed the crimes "while armed" under subdivision (b)(1)(F) of this section because there was no proof that any of the juveniles possessed a firearm before they stole the firearms, it was not clearly erroneous for the circuit court to find the juvenile in possession of a firearm under subdivision (b)(2) of this section because, at the very least, his accomplices possessed the firearms as they were taking them from the hardware store. *J.B.G. v. State*, 2020 Ark. App. 43, 594 S.W.3d 109 (2020).

Transfer to Juvenile Division Denied.

Transfer of defendant to juvenile court held properly denied. *Little v. State*, 261 Ark. 859, 554 S.W.2d 312 (1977), cert. denied, 435 U.S. 957, 98 S. Ct. 1590, 55 L. Ed. 2d 809 (1978); *Franklin v. State*, 7 Ark. App. 75, 644 S.W.2d 318 (1983); *Evans v. State*, 287 Ark. 136, 697 S.W.2d 879 (1985); *Ashing v. State*, 288 Ark. 75, 702 S.W.2d 20 (1986) (decisions under prior law); *Walker v. State*, 304 Ark. 393, 803 S.W.2d 502 (1991); *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992).

Multiple counts of aggravated robbery were sufficient to withstand a motion for transfer to juvenile court when the opposing evidence was essentially the defendant's age. *Johnson v. State*, 307 Ark. 525, 823 S.W.2d 440 (1992).

Trial court's decision in refusing to transfer five charges against the defendant from circuit court to juvenile court was not clearly erroneous, where no commitment under juvenile jurisdiction could have resulted from a transfer due to defendant's age of 18 years. *Hogan v. State*, 311 Ark. 262, 843 S.W.2d 830 (1992).

Where the defendant was charged with four counts of aggravated robbery and terroristic acts, all of which involved patently violent acts, transfer to juvenile court was properly denied despite defendant not having been the actual triggerman. *Walter v. State*, 317 Ark. 274, 878 S.W.2d 374 (1994).

Where there is evidence that the current felony charges were part of a repetitive pattern of offenses, that past efforts at rehabilitation in the juvenile court system have not been successful, and that the pattern of offenses has become increasingly more serious, these factors alone

prevent the appellate court from holding the trial court's denial of a transfer to juvenile court motion clearly erroneous. *Sebastian v. State*, 318 Ark. 494, 885 S.W.2d 882 (1994).

Transfer for statutory rape prosecution properly denied. *Hansen v. State*, 323 Ark. 407, 914 S.W.2d 737 (1996).

Where defendant's actions and offense exhibited a serious and violent nature and where defendant failed to show trial court erred in finding that defendant was not a good prospect for rehabilitation, defendant's motion to transfer was properly denied. *Macon v. State*, 323 Ark. 498, 915 S.W.2d 273 (1996).

Where both the state's charges and testimony reflected that defendant, who was 15 years of age at the time of the alleged murder but 16 at the time of trial, was involved in the serious offense of capital felony murder, and had employed a gun in committing the offense, defendant's motion to transfer his case to juvenile court properly denied. *Wilkins v. State*, 324 Ark. 60, 918 S.W.2d 702 (1996).

Transfer denied pursuant to subdivision (e)(1) (now (g)(1)) of this section where defendant severely beat elderly shop owner during the course of a robbery. *Booker v. State*, 324 Ark. 468, 922 S.W.2d 337 (1996).

Transfer denied where defendant caused two-year-old victim to bleed during commission of statutory rape, and where defendant was to turn 18 less than six months after trial. *Brooks v. State*, 326 Ark. 201, 929 S.W.2d 160 (1996).

Where 16-year-old defendant held a pistol to the victim's head and attempted to pull the trigger, sufficient violence was employed so as to uphold the denial of the transfer of the aggravated robbery and attempted capital murder charges to juvenile court. *Kindle v. State*, 326 Ark. 282, 931 S.W.2d 117 (1996).

Transfer to juvenile court denied where defendant was charged with aggravated robbery and where three counts of capital murder were pending against defendant. *Carroll v. State*, 326 Ark. 602, 932 S.W.2d 339 (1996).

Transfer of 17-year-old accomplice with a low I.Q., charged with capital murder, properly denied. *Carroll v. State*, 326 Ark. 882, 934 S.W.2d 523 (1996).

Transfer denied where the defendant had previously been charged with theft,

had been on probation or in rehabilitation programs since he was 12 years old, and was over 18 years old at the time of trial. *Jensen v. State*, 328 Ark. 349, 944 S.W.2d 820 (1997).

Transfer to juvenile court denied where the crimes, although property crimes, were intrusive to the victims and serious. *Smith v. State*, 328 Ark. 736, 946 S.W.2d 667 (1997).

Transfer denied, based on the seriousness of a Class B felony, and the fact that defendant had turned 18 years of age. *Oglesby v. State*, 329 Ark. 127, 946 S.W.2d 693 (1997).

Fourteen-year old defendant tried as an adult where the offense charged was capital murder and the trial court determined that the child was beyond rehabilitation. *Ponder v. State*, 330 Ark. 43, 953 S.W.2d 555 (1997).

Transfer denied where juvenile was 18 by the time of the hearing on the motion to transfer and where evidence linked the robbery charge to serious and violent conduct. *Brown v. State*, 330 Ark. 603, 954 S.W.2d 273 (1997).

Transfer of juvenile offender to juvenile court properly denied where he was charged with violent offenses and his prior record indicated an extensive history of offenses that had escalated in seriousness. *Wright v. State*, 331 Ark. 173, 959 S.W.2d 50 (1998).

The trial court had clear and convincing evidence to deny a motion to transfer a Class B felony terroristic act charge to the juvenile court where the terroristic act charge involved the firing of a gun at an occupied vehicle, the charge appeared to be part of a repetitive pattern of adjudicated offenses that increased in seriousness, and the defendant's prospects for rehabilitation were remote. *Jones v. State*, 332 Ark. 617, 967 S.W.2d 559 (1998).

The trial court did not err in refusing to transfer the defendant's case to juvenile court where the court concluded that, because of the defendant's prior criminal history, his "lack of responsibility and mental maturity," and his numerous suspensions from and willful failure to attend school, his prospects for rehabilitation were poor or nonexistent and that jurisdiction of the case should be retained. *Landrum v. State*, 63 Ark. App. 12, 971 S.W.2d 278 (1998).

The trial court properly denied a motion by a 16-year-old charged with residential burglary, rape, and terroristic threatening in the first degree to transfer the charges to juvenile court where, in addition to the seriousness and violent nature of the charges, the trial court also found the charges to be part of a repetitive pattern of adjudicated offenses of increasing violence towards persons. *Box v. State*, 71 Ark. App. 403, 30 S.W.3d 754 (2000).

The circuit court did not clearly err in denying the defendant's motion to transfer, even if testimony by a detective regarding what he was told by a codefendant and regarding the defendant's own statement was improper, where (1) there was evidence that the case involved a home intrusion that resulted in injuries to one victim and the death of the victim's unborn child, and (2) the state presented, without objection from the defendant, evidence regarding his prior juvenile adjudications, his failure to comply with the conditions of his probation, and his commitment to the Division of Youth Services. *Witherspoon v. State*, 74 Ark. App. 151, 46 S.W.3d 549 (2001).

Trial court erred in granting a defense motion to transfer a rape case to the juvenile division where defendant was 17 when he committed the rape, he caused a tear in the 14-year-old victim's vaginal area requiring surgery and hospitalization, and he had previously been adjudicated a juvenile offender for first-degree criminal mischief, which involved destruction or causing damage to property; there had been an increase in the seriousness of the alleged offenses, indicating a lack of rehabilitation. *State v. Graydon*, 86 Ark. App. 319, 184 S.W.3d 476 (2004).

Where a 15-year-old defendant and his accomplice were charged with the robbery of a grocery store, the circuit court did not err by denying defendant's motion to transfer his case to the juvenile division pursuant to this section. While defendant claimed that his accomplice put a gun to his head and intimidated him into participating in the robbery, a video surveillance tape in the store showed defendant entering the store first with a gun and proceeding with his accomplice against the store owner and his wife; therefore, the clear and convincing evidence did not support defendant's story that he was an unwill-

ing participant in the robbery. *R.M.W. v. State*, 375 Ark. 1, 289 S.W.3d 46 (2008).

Pursuant to subsection (g) of this section, the circuit court did not err in denying defendant juvenile's motion to transfer his case to the juvenile division of the circuit court where it made findings on each of the statutory factors; defendant had a prior juvenile offense and he was involved in serious crimes. *R.A.S. v. State*, 2009 Ark. App. 713 (2009).

Because a juvenile twice in less than a month invited 16-year-old girls into his truck, pulled over into isolated areas, and forced himself on the victims despite their protests, sexually assaulting one and raping the other, and because he understood that his conduct was wrong, and had no deficits in his family life that would excuse his conduct, pursuant to subsection (g) of this section, the juvenile's motions to transfer to juvenile court were properly denied. *Lewis v. State*, 2011 Ark. App. 691 (2011).

Trial court did not err in denying a juvenile's motion to transfer a case to juvenile court after the juvenile was charged with second-degree murder because the trial court complied with the mandate of subsection (g) of this section by considering all of the required factors and making findings for each; the victim received eight stab wounds that resulted in the victim's death. *Cole v. State*, 2012 Ark. App. 281 (2012).

Trial court committed no error in denying the juvenile's motion to transfer the case to juvenile court, because the trial court considered each of the statutory factors under subsection (g) of this section, and made written findings; the evidence demonstrated that the juvenile had been offered the services of the juvenile system as a result of his commission of previous offenses, but rather than comply with the juvenile court's rules he persisted in delinquent behavior, and the present allegations (four counts of aggravated robbery, four counts of theft of property, one count of theft by receiving, and one count of aggravated assault) involved serious, violent and premeditated conduct that raised legitimate concerns relating to the protection of society. *D.D.R. v. State*, 2012 Ark. App. 329, 420 S.W.3d 494 (2012).

Denial of a request to transfer a first-degree murder and terrorist acts case to juvenile court under subsection (g) of this

section was proper because a juvenile had not taken advantage of opportunities given to her, she was charged with very serious offenses, she was involved in the planning of the offenses, and she was involved in gang activity. Because the transfer was denied, any arguments relating to extended-juvenile-jurisdiction were not applicable. *M.R.W. v. State*, 2012 Ark. App. 591, 424 S.W.3d 355 (2012).

Trial court did not err in denying defendant juvenile's motion to transfer his case to the juvenile court because the evidence supported a finding that defendant was not likely to be rehabilitated in the juvenile system; although defendant did well at times in the juvenile system, he was repeatedly arrested for more crimes and failing to comply with probation, and his probation officer testified that all available resources had been exhausted. *K.O.P. v. State*, 2013 Ark. App. 667 (2013).

Where a defendant appealed a circuit court's denial of his motion to transfer his case to the juvenile division, there was evidence, separate from the criminal information, to support the circuit court's findings regarding the first three factors listed in subsection (g) of this section, given defendant's age and the nature of the offenses alleged, the circuit's holding as to the seventh factor was not clearly erroneous, and, in light of the other findings by the circuit court, its finding under factor ten was not clearly erroneous. *A.E.L. v. State*, 2013 Ark. App. 706 (2013).

Circuit court properly considered all the factors in subsection (g) of this section and its decision to deny defendant's motion to transfer his case to the juvenile division was not clearly erroneous where the evidence showed that defendant willingly participated in the victim's abduction, robbery, and murder, defendant was aware that the victim had been left to die, he drove around in and later burned the victim's car, and defendant had a history of failing to rehabilitate. *R.W.G. v. State*, 2014 Ark. App. 545, 444 S.W.3d 376 (2014).

Circuit court did not err in denying defendant's motion to transfer his case to juvenile court where the seriousness of the aggravated robbery, the victim's injuries, and the testimony that the group planned and repeated the crime two other times during the day demonstrated the violent, premeditated, and willful manner

of their actions; although defendant did not shoot the victim, there was evidence that he was armed with a rifle and that he was aware that another member of the group had a shotgun. *Miller v. State*, 2015 Ark. App. 117, 456 S.W.3d 761 (2015).

Denial of the motion to transfer was affirmed as to the kidnapping and aggravated robbery charges, given in part that defendant juvenile had failed to take advantage of rehabilitative opportunities in the past; while facilities and programs were available, defendant did not show an ability or willingness to take advantage of them, and the trial court found no clear evidence that justified prosecution in the juvenile division. *V.S. v. State*, 2015 Ark. App. 433, 468 S.W.3d 311 (2015).

Circuit court did not clearly err in denying appellant's motion to transfer his case to juvenile court where he allegedly participated in premeditated and serious crimes of violence against persons for which he had some part in planning, he had a history of failing to comply with juvenile-division orders, and he had participated in every program available in juvenile court. *Hardin v. State*, 2016 Ark. App. 178, 486 S.W.3d 808 (2016).

Circuit court properly denied defendant's motion to transfer his case to the juvenile division because its factual findings on the statutory factors were not clearly erroneous; the circuit court stressed the serious nature of the offenses and found that the protection of society outweighed the one factor—defendant's previous history—that favored transfer, and the fact that it did not weigh one factor the way defendant wanted it weighed did not make its decision clearly erroneous. *Lindsey v. State*, 2016 Ark. App. 355, 498 S.W.3d 336 (2016).

Circuit court did not clearly err in denying defendant's motion to transfer his rape case to the juvenile division; although there were treatment plans that would have been available to him in the juvenile system, his early-age sexually aggressive behavior, re-offense despite months of residential sex-offender treatment, and high risk of reoffending did not demonstrate an ability or willingness to take advantage of those plans such that prosecution as a juvenile was appropriate. *Leach v. State*, 2016 Ark. App. 502, 504 S.W.3d 668 (2016).

Circuit court did not clearly err in denying appellant's motion to transfer his case to the juvenile division where it considered all of the factors and determined that the seriousness of the offenses, the fact that the offenses were committed against persons, the need for societal protection, and the level of participation in the offenses outweighed any other factors. *Austin v. State*, 2017 Ark. App. 114, 515 S.W.3d 633 (2017).

Circuit court did not err in denying defendant's motion to transfer his case to juvenile court where it considered each of the factors in subsection (g) of this section, made findings on each, including the serious nature of the rape offense, defendant's active role in the crime, his previous criminal history, and his maturity level, and the findings were supported by the evidence. *Flowers v. State*, 2017 Ark. App. 468, 528 S.W.3d 851 (2017).

Circuit court did not err in denying defendant juvenile's motion to transfer his case to the juvenile division of the circuit court under this section; even though the juvenile division had programs that might ensure the protection of society, defendant had participated in one program but nevertheless later engaged in criminal activity, and the circuit court did not clearly err in finding that the resources available were not likely to rehabilitate him. *Hubbard v. State*, 2017 Ark. App. 636, 535 S.W.3d 669 (2017).

Trial court did not clearly err in denying defendant's motion to transfer his case to the juvenile division where the trial court made specific findings on each statutory factor tailored to defendant and the evidence before it, and given that the case involved a premeditated bank robbery in which defendant shot a person with a sawed-off shotgun, it was not error to weigh that against the testimony that defendant was a good person and had an abysmal home life. *Randolph v. State*, 2017 Ark. App. 694, 537 S.W.3d 294 (2017).

Circuit court did not clearly err in denying defendant's motion to transfer his case to juvenile court where he was charged with four Class Y felonies, he had played an integral and active role in the planning and commission of the offenses, he provided items to be used in the home invasion, and the homicide would not have occurred but for his involvement in nam-

ing the murder victim as a potential robbery target after the victim's act of kindness toward defendant. *Parks v. State*, 2018 Ark. App. 63, 542 S.W.3d 181 (2018).

Trial court did not clearly err in denying defendant's motions to transfer his cases to the juvenile division of circuit court because it properly considered all the factors, heard the evidence, weighed it, reached a decision, and enumerated its conclusions in an order; the trial court did not ignore the evidence that defendant cited in support of his motions or that was presented at the hearing but simply weighed the evidence differently than defendant desired. *Harris v. State*, 2018 Ark. App. 72, 540 S.W.3d 302 (2018).

Denial of defendant's motions to transfer defendant's cases to the juvenile division of circuit court was appropriate because the circuit court considered and weighed the evidence on all of the statutory factors, as required, and did not ignore the testimony of witnesses who thought that defendant had the potential to be rehabilitated, but simply weighed the evidence differently than defendant desired. In addition, each of defendant's cases included a charge of aggravated robbery, which was a serious and violent offense. *Ward v. State*, 2018 Ark. App. 210 (2018).

Circuit court's decision to deny a juvenile-transfer motion was not clearly erroneous because the fact that the juvenile followed his brother's orders in tying up the victim did not diminish his level of culpability, as he stole a gun for the group to use to "hit a lick" and thus played an integral and active role in the planning and commission of the crimes. *Sharp v. State*, 2018 Ark. App. 255, 548 S.W.3d 846 (2018).

Trial court did not clearly err in denying defendant's motion to transfer the case to juvenile court where the charges were serious and involved the discharging of a firearm in a residential neighborhood, multiple shots struck the interior of nearby apartments where people were present, defendant was on probation at the time for previously possessing a handgun, during which he failed to complete an anger management course and failed two drug tests, and he functioned at an accelerated level academically and held a stable job. *Woods v. State*, 2018 Ark. App. 576, 565 S.W.3d 124 (2018).

Denial of motion to transfer case to juvenile division upheld. *Drexler v. State*, 2018 Ark. App. 95, 538 S.W.3d 888 (2018); *Allen v. State*, 2018 Ark. App. 244, 548 S.W.3d 227 (2018); *Clinkscale v. State*, 2018 Ark. App. 271, 550 S.W.3d 409 (2018); *Clinkscale v. State*, 2018 Ark. App. 273, 550 S.W.3d 49 (2018); *Ealy v. State*, 2018 Ark. App. 339 (2018); *Randof v. State*, 2018 Ark. App. 441, 559 S.W.3d 307 (2018); *Moore v. State*, 2018 Ark. App. 516, 558 S.W.3d 918 (2018); *Heard v. State*, 2019 Ark. App. 586, 590 S.W.3d 215 (2019); *Bailey v. State*, 2020 Ark. App. 232 (2020); *Walton v. State*, 2020 Ark. App. 318, 602 S.W.3d 754 (2020).

Circuit court did not clearly err in denying a juvenile's motion to transfer his case to the juvenile division where he had been charged with aggravated robbery in which restaurant employees were held at gunpoint, he had held the gun in one robbery, his age did not minimize his culpability as an accomplice, his prior involvement with the juvenile-justice system and continued antisocial behavior indicated that the juvenile justice system would not have been effective in rehabilitating him, and the circuit court had considered his family's economic disadvantages. *Holmes v. State*, 2019 Ark. App. 21, 569 S.W.3d 895 (2019).

Where appellant was charged with neg-

ligent homicide while intoxicated arising out of a motor vehicle accident when he was age 17, the circuit court did not clearly err by denying the motion to transfer the case to juvenile court or to designate the case as an extended juvenile-jurisdiction proceeding; appellant had already been provided numerous treatments, services, and interventions in his life, he would be age 21 in October 2020 which meant he would only have access to the Division of Youth Services for less than one year, the offense was against a person and the victim lost his life, and testimony from a trooper concerning appellant's dilated pupils and quick speech indicated signs of stimulant use. *Lewis v. State*, 2020 Ark. App. 123, 596 S.W.3d 43 (2020).

Cited: *Bright v. State*, 307 Ark. 250, 819 S.W.2d 7 (1991); *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Oliver v. State*, 312 Ark. 466, 851 S.W.2d 415 (1993); *Robinson v. State*, 41 Ark. App. 20, 847 S.W.2d 49 (1993); *State v. Pulaski County Circuit-Chancery Court*, 316 Ark. 473, 872 S.W.2d 854 (1994); *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996); *Humphrey v. State*, 327 Ark. 753, 940 S.W.2d 860 (1997); *Sanford v. State*, 331 Ark. 334, 962 S.W.2d 335 (1998); *C.L. v. State*, 2012 Ark. App. 374 (2012).

9-27-319. Double jeopardy.

(a) No juvenile who has been subjected to an adjudication pursuant to a petition alleging him or her to be delinquent shall be tried later under criminal charges based upon facts alleged in the petition to find him or her delinquent.

(b) No juvenile who has been tried for a violation of the criminal laws of this state shall be later subjected to a delinquency proceeding arising out of the facts that formed the basis of the criminal charges.

History. Acts 1989, No. 273, § 18.

CASE NOTES

Cited: *Walker v. State*, 309 Ark. 23, 827 S.W.2d 637 (1992); *Oliver v. State*, 312 Ark. 466, 851 S.W.2d 415 (1993).

9-27-320. Fingerprinting or photographing.

(a)(1) When a juvenile is arrested for any offense that if committed by an adult would constitute a Class Y, Class A, or Class B felony, the

juvenile shall be photographed and fingerprinted by the law enforcement agency.

(2) In the case of an allegation of delinquency, a juvenile shall not be photographed or fingerprinted under this subchapter by any law enforcement agency unless he or she has been taken into custody for the commission of an offense that, if committed by an adult, would constitute a Class Y, Class A, or Class B felony.

(b)(1) Copies of a juvenile's fingerprints and photographs shall be made available only to other law enforcement agencies, the Arkansas Crime Information Center, prosecuting attorneys, and the juvenile division of circuit court.

(2) Photographs and fingerprints of juveniles adjudicated delinquent for offenses for which they could have been tried as adults shall be made available to prosecuting attorneys and circuit courts for use at sentencing in subsequent adult criminal proceedings against those same individuals.

(3)(A) When a juvenile departs without authorization from a youth services center or other facility operated by the Division of Youth Services for the care of delinquent juveniles, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Youth Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information the Director of the Division of Youth Services deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(B) When a juvenile departs without authorization from the Arkansas State Hospital, if at the time of departure the juvenile is committed as a result of an acquittal on the grounds of mental disease or defect for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information the Director of the Division of Aging, Adult, and Behavioral Health Services deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(C) When a juvenile departs without authorization from a local juvenile detention facility, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the director of the juvenile detention facility shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director of the juvenile detention facility deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(c) Each law enforcement agency in the state shall keep a separate file of photographs and fingerprints, it being the intention that the photographs and fingerprints of juveniles not be kept in the same file with those of adults.

(d) When a juvenile is adjudicated delinquent for an offense for which the juvenile could be charged as an adult:

(1) The arresting law enforcement agency shall ensure that the fingerprints and photograph of the juvenile have been properly taken and submitted; and

(2) The court shall submit the adjudicated delinquent information to the center.

(e) If the juvenile is found not to have committed the alleged delinquent act, the court may order a law enforcement agency to return all pictures and fingerprints to the circuit court and shall order the law enforcement agency that took the juvenile into custody to mark the arrest record with the notation “found not to have committed the alleged offense”.

(f) The center shall create a form to be used for the reporting and expungement of juvenile information.

(g) If the juvenile is arrested for a Class Y, Class A, or Class B felony but not charged, the prosecuting attorney shall submit the information to the center and the arrest shall be removed from the center’s records.

History. Acts 1989, No. 273, § 19; 1993, No. 535, § 4; 1993, No. 551, § 4; 1994 (2nd Ex. Sess.), No. 69, § 3; 1994 (2nd Ex. Sess.), No. 70, § 3; 1997, No. 332, § 1; 2001, No. 177, § 1; 2001, No. 1712, § 1; 2003, No. 1166, § 11; 2015, No. 1016, § 2 [3]; 2017, No. 913, § 26.

A.C.R.C. Notes. Act 2015, No. 1016, § 2 has been enacted twice within Act 2015, No. 1016 concerning §§ 9-27-309(j) and § 9-27-320.

Publisher’s Notes. Acts 2001, No. 1712 specifically amended this section as amended by Acts 2001, No. 177.

Amendments. The 2015 amendment, in (a)(1) and (2), substituted “a Class Y, Class A, or Class B felony” for “a felony or

a Class A misdemeanor in which violence or the use of a weapon was involved”; inserted present (d); redesignated former (d) as (e); in (e), substituted “If” for “However, in any case in which”, deleted “circuit” preceding “court” and substituted “a law enforcement agency” for “any law enforcement agency”; and added (f) and (g).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” twice in (b)(3)(B).

Cross References. Fingerprinting, DNA sample collection, and photographing, § 12-12-1006.

CASE NOTES

Waiver.

Minor and his guardian signed valid waiver of minor’s right not to be fingerprinted. *Ward v. State*, 293 Ark. 88, 733 S.W.2d 728 (1987), overruled, *MacKin-*

trush v. State, 334 Ark. 390, 978 S.W.2d 293 (1998) (decision under prior law).

Cited: *K.M. v. State*, 335 Ark. 85, 983 S.W.2d 93 (1998).

9-27-321. Statements not admissible.

Statements made by a juvenile to the intake officer or probation officer during the intake process before a hearing on the merits of the petition filed against the juvenile shall not be used or be admissible against the juvenile at any stage of any proceedings in circuit court or in any other court.

History. Acts 1989, No. 273, § 20; 2003, No. 1166, § 12.

CASE NOTES

Applicability.

An incriminating statement made to a state trooper is not prohibited from admission at trial by this section. *Manatt v. State*, 311 Ark. 17, 842 S.W.2d 845 (1992), cert. denied, 507 U.S. 1005, 113 S. Ct. 1647, 123 L. Ed. 2d 268 (1993).

Court properly admitted juvenile's statements at a probation revocation proceeding to her probation officer regarding taking drugs because this section protected juveniles from Miranda violations in a pre-adjudication context, not at a revocation hearing; in addition, the statement was properly admitted because the statement was offered to prove that defendant had violated the terms of her proba-

tion. *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

Circuit court did not clearly err in denying the suppression of spontaneous statements a juvenile made during his arrest where the arresting officer testified at trial and made no mention of intake, a second officer who was not an intake or probation officer, but rather a sergeant, testified at the hearing that he was also present when the juvenile made the statement, and the juvenile did not make the statement in response to a question, but made the statement of his own volition. *K.B. v. State*, 2017 Ark. App. 478, 531 S.W.3d 420 (2017).

9-27-322. Release from custody.

(a) Upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall immediately notify the juvenile's parent, guardian, or custodian of the location at which the juvenile is being held and of the reasons for the juvenile's detention if such notification has not previously taken place and shall:

(1) Unconditionally release the juvenile to the juvenile's parent, guardian, or custodian;

(2) Release the juvenile to the juvenile's parent, guardian, or custodian upon the written promise of the parent, guardian, or custodian to bring the juvenile before the court when summoned;

(3) Release the juvenile to the juvenile's parent, guardian, or custodian upon written conditions to ensure the juvenile will be brought before the court;

(4) Pending court review, place the juvenile in shelter care if unable to locate the juvenile's parent, guardian, or custodian;

(5) Pending court review, place the juvenile on electronic monitoring; or

(6) Detain the juvenile pending a detention hearing before the circuit court.

(b) CRITERIA FOR RELEASE BY INTAKE OFFICER.

(1) In determining whether to detain a juvenile who has been taken into custody on an allegation of delinquency pending a detention hearing, the intake officer shall consider the following facts:

(A) Ties to the community, including:

(i) Place and length of residence;

(ii) School attendance;

(iii) Present and past employment;

(iv) Family relationships; and

- (v) References; and
- (B) Nature of the alleged offense, including:
 - (i) Whether the offense would constitute a felony or misdemeanor;
 - (ii) The use of force or violence;
 - (iii) Prior juvenile or criminal record; and
 - (iv) Any history of failure to appear for court appearances.
- (2) The intake officer may determine that there is no less restrictive alternative to detention if detention is necessary:
 - (A) To prevent imminent bodily harm to the juvenile or to another;
or
 - (B) To prevent flight when the juvenile is a fugitive or escapee from another jurisdiction.
- (3) Only if a substantial number of the facts considered under subdivision (b)(1) of this section weigh against the juvenile or one (1) of the two (2) circumstances in subdivision (b)(2) of this section exists shall the juvenile be detained pending a detention hearing by the court.
- (c) The juvenile and his or her parent, guardian, or custodian shall not be charged the cost of detention, shelter, or electronic monitoring authorized by a juvenile officer under subsection (a) of this section.

History. Acts 1989, No. 273, § 21; 2003, No. 1166, § 13; 2015, No. 1021, §§ 1, 2.

Amendments. The 2015 amendment inserted (a)(3) through (5); redesignated former (a)(3) as (a)(6); and added (c).

CASE NOTES

Cited: K.W. v. State, 327 Ark. 205, 937 S.W.2d 658 (1997).

9-27-323. Diversion — Conditions — Agreement — Completion — Definition.

- (a) If the prosecuting attorney, after consultation with the intake officer, determines that a diversion of a delinquency case is in the best interests of the juvenile and the community, the officer with the consent of the juvenile and his or her parent, guardian, or custodian may attempt to make a satisfactory diversion of a case.
- (b) If the intake officer determines that a diversion of a family in need of services case is in the best interest of the juvenile and the community, the officer with the consent of the petitioner, juvenile, and his or her parent, guardian, or custodian may attempt to make a satisfactory diversion of a case.
- (c) In addition to the requirements of subsections (a) and (b) of this section, a diversion of a case is subject to the following conditions:
 - (1) The juvenile has admitted his or her involvement in:
 - (A) A delinquent act for a delinquency diversion; or
 - (B) A family in need of services act for a family in need of services diversion;

(2) The intake officer advises the juvenile and his or her parent, guardian, or custodian that they have the right to refuse a diversion of the case and demand the filing of a petition and a formal adjudication;

(3) Any diversion agreement is entered into voluntarily and intelligently by the juvenile with the advice of his or her attorney or by the juvenile with the consent of a parent, guardian, or custodian if the juvenile is not represented by counsel;

(4) The diversion agreement provides for the supervision of a juvenile or the referral of the juvenile to a public or private agency for services not to exceed six (6) months;

(5) All other terms of a diversion agreement do not exceed nine (9) months; and

(6) The juvenile and his or her parent, guardian, or custodian shall have the right to terminate the diversion agreement at any time and to request the filing of a petition and a formal adjudication.

(d)(1) The terms of the diversion agreement shall:

(A) Be in writing in simple, ordinary, and understandable language;

(B) State that the agreement was entered into voluntarily by the juvenile;

(C) Name the attorney or other person who advised the juvenile upon the juvenile's entering into the agreement; and

(D) Be signed by all parties to the agreement and by the prosecuting attorney if it is a delinquency case and the offense would constitute a felony if committed by an adult or a family in need of services case pursuant to § 6-18-222.

(2) A copy of the diversion agreement shall be given to the juvenile, the counsel for the juvenile, the parent, guardian, or custodian, and the intake officer, who shall retain the copy in the case file.

(e) Diversion agreements shall be:

(1) Implemented by all juvenile courts based on validated assessment tools; and

(2) Used to provide for:

(A) Nonjudicial probation under the supervision of the intake officer or probation officer for a period during which the juvenile may be required to comply with specified conditions concerning his or her conduct and activities;

(B) Participation in a court-approved program of education, counseling, or treatment;

(C) Participation in a court-approved teen court;

(D) Participation in a juvenile drug court program;

(E) Enrollment in the Regional Educational Career Alternative School System for Adjudicated Youth; and

(F)(i) Payment of restitution to the victim.

(ii) Payments of restitution under subdivision (e)(2)(F)(i) of this section shall be paid under § 16-13-326.

(f)(1) If a diversion of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period for which the agreement was entered into.

(2) If a petition is filed within this period, the juvenile's compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

(g) The diversion agreement may be terminated, and the prosecuting attorney in a delinquency case or the petitioner in a family in need of services case may file a petition if at any time during the agreement period:

(1) The juvenile or his or her parent, guardian, or custodian declines to further participate in the diversion process;

(2) The juvenile fails, without reasonable excuse, to attend a scheduled conference;

(3) The juvenile appears unable or unwilling to benefit from the diversion process; or

(4) The intake officer becomes apprised of new or additional information that indicates that further efforts at diversion would not be in the best interests of the juvenile or society.

(h) Upon the satisfactory completion of the diversion period:

(1) The juvenile shall be dismissed without further proceedings;

(2) The intake officer shall furnish written notice of the dismissal to the juvenile and his or her parent, guardian, or custodian; and

(3) The complaint and the agreement, and all references thereto, may be expunged by the court from the juvenile's file.

(i)(1) A juvenile intake or probation officer may charge a diversion fee only after review of an affidavit of financial means and a determination of the juvenile's or the juvenile's parent's, guardian's, or custodian's ability to pay the fee.

(2) The diversion fee shall not exceed twenty dollars (\$20.00) per month to the juvenile division of circuit court.

(3) The court may direct that the fees be collected by the juvenile officer, sheriff, or court clerk for the county in which the fees are charged.

(4) The officer designated by the court to collect diversion fees shall maintain receipts and account for all incoming fees and shall deposit the fees at least weekly into the county treasury of the county where the fees are collected and in which diversion services are provided.

(5) The diversion fees shall be deposited into the account with the juvenile service fees under § 16-13-326.

(j)(1) In judicial districts having more than one (1) county, the judge may designate the treasurer of one (1) of the counties in the district as the depository of all juvenile fees collected in the district.

(2) The treasurer so designated by the court shall maintain a separate account of the juvenile fees collected and expended in each county in the district.

(3) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

(4) The funds derived from the collection of diversion fees shall be used by agreement of the judge or judges of the circuit court designated to hear juvenile cases in their district plan pursuant to Supreme Court

Administrative Order No. 14, originally issued April 6, 2001, and the quorum court of the county to provide services and supplies to juveniles at the discretion of the juvenile division of circuit court.

(k)(1) The Department of Human Services shall develop a statewide referral protocol for helping to coordinate the delivery of services to sexually exploited children.

(2) As used in this section, “sexually exploited child” means a person less than eighteen (18) years of age who has been subject to sexual exploitation because the person:

(A) Is a victim of trafficking of persons under § 5-18-103;

(B) Is a victim of child sex trafficking under 18 U.S.C. § 1591, as it existed on January 1, 2013; or

(C) Engages in an act of prostitution under § 5-70-102 or sexual solicitation under § 5-70-103.

History. Acts 1989, No. 273, § 22; 1995, No. 1003, § 1; 1997, No. 1118, § 1; 2003, No. 1809, § 4; 2007, No. 1022, § 1; 2011, No. 1202, § 2; 2013, No. 1257, § 7; 2019, No. 189, § 3.

A.C.R.C. Notes. Acts 2013, No. 1257, § 1, provided: “Legislative findings. The General Assembly finds that:

“(1) The criminal justice system is not the appropriate place for sexually exploited children because it serves to re-traumatize them and to increase their feelings of low self-esteem;

“(2) Both federal and international law recognize that sexually exploited children are the victims of crime and should be treated as such;

“(3) Sexually exploited children should, when possible, be diverted into services that address the needs of these children outside of the justice system; and

“(4) Sexually exploited children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services.”

Acts 2013, No. 1257, § 2, provided: “Legislative intent.

“(1) The intent of this act is to protect a child from further victimization after the child is discovered to be a sexually exploited child by ensuring that a child protective response is in place in the state.

“(2) This is to be accomplished by presuming that any child engaged in prostitution or solicitation is a victim of sex trafficking and providing these children with the appropriate care and services when possible.

“(3) In determining the need for and

capacity of services that may be provided, the Department of Human Services shall recognize that sexually exploited children have separate and distinct service needs according to gender, and every effort should be made to ensure that these children are not prosecuted or treated as juvenile delinquents, but instead are given the appropriate social services.”

Acts 2019, No. 189, § 1, provided: “This act shall be known and may be cited as the ‘Restoring Arkansas Families Act’.”

Acts 2019, No. 189, § 2, provided: “Legislative findings and intent.

“(a) The General Assembly finds:

“(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

“(2) Stakeholder groups represented on the board include:

“(A) Families and youth involved in the juvenile system;

“(B) The Department of Education;

“(C) The Department of Workforce Services;

“(D) The Department of Human Services;

“(E) Youth services providers;

“(F) Juvenile judges;

“(G) The Administrative Office of the Courts;

“(H) Prosecuting attorneys;

“(I) Public defenders;

“(J) Youth advocates; and

“(K) Experts in adolescent development; and

“(3) In 2017, the board worked with the Arkansas Supreme Court Commission on

Children, Youth, and Families to identify concerns and priorities for legislative action.

“(b) The purpose of this act is to:

“(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

“(2) Reduce the number of secure out-of-home placements;

“(3) Redirect funding from secure residential facilities to evidence-based community services;

“(4) Equitably allocate services in and across each judicial district;

“(5) Enhance treatment for youth committed to the Division of Youth Services; and

“(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers.”

Amendments. The 2019 amendment added (e)(1), and redesignated the former provisions of (e) accordingly; substituted “Used to provide” for “limited to providing” in the introductory language of (e)(2); and added (e)(2)(F).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev.

Mary Ward, Note: Arkansas’s Human Trafficking Laws: Steps in the Right Di-

rection or a False Sense of Accomplishment?, 37 U. Ark. Little Rock L. Rev. 133 (2014).

9-27-324. Preliminary investigation.

(a) Upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall also conduct a preliminary investigation.

(b) In the course of a preliminary investigation, the intake officer may:

(1) Interview the complainant, victim, or witnesses of the act and circumstances alleged in the complaint;

(2) Review existing records of the court, law enforcement agencies, and public records of other agencies; and

(3) Hold conferences with the juvenile and his or her parent, guardian, or custodian for the purpose of interviewing them and discussing the disposition of the complaint.

(c) Any additional inquiries may be made only with the consent of the juvenile and his or her parent, guardian, or custodian.

(d)(1) Participation of the juvenile and his or her parent, guardian, or custodian in a conference with an intake officer shall be voluntary, with the right to refuse to continue participation at any time.

(2) At the conferences, the juvenile and his or her parent, guardian, or custodian shall be advised of the juvenile’s right to assistance of counsel and the right to remain silent when questioned by the intake officer.

History. Acts 1989, No. 273, § 23.

9-27-325. Hearings — Generally.

(a)(1)(A) All hearings shall be conducted by the judge without a jury, except as provided by the Extended Juvenile Jurisdiction Act, § 9-27-501 et seq.

(B) If a juvenile is designated an extended juvenile jurisdiction offender, the juvenile shall have a right to a jury trial at the adjudication.

(2) The juvenile shall be advised of the right to a jury trial by the court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(3) The right to a jury trial may be waived by a juvenile only after being advised of his or her rights and after consultation with the juvenile's attorney.

(4) The waiver shall be in writing and signed by the juvenile and the juvenile's attorney.

(b)(1) The defendant need not file a written responsive pleading in order to be heard by the court.

(2) In dependency-neglect proceedings, if not appointed by the court in an order provided to all parties, counsel shall file a notice of appearance immediately upon acceptance of representation, with a copy to be served on the petitioner and all parties.

(c)(1) At the time set for hearing, the court may:

(A) Proceed to hear the case only if the juvenile is present or excused for good cause by the court; or

(B) Continue the case upon determination that the presence of an adult defendant is necessary.

(2) Upon determining that a necessary party is not present before the court, the court may:

(A) Issue an order for contempt if the juvenile was served with an order to appear; or

(B) Issue an order to appear, with a time and place set by the court for hearing, if the juvenile was served with a notice of hearing.

(d)(1) The court shall be a court of record.

(2) A record of all proceedings shall be kept in the same manner as other proceedings of circuit court and in accordance with rules promulgated by the Supreme Court.

(e)(1) Unless otherwise indicated, the Arkansas Rules of Evidence shall apply.

(2)(A) Upon motion of any party, the court may order that the father, mother, and child submit to scientific testing for drug or alcohol abuse.

(B) A written report of the test results prepared by the person conducting the test, or by a person under whose supervision or direction the test and analysis have been performed, certified by an affidavit subscribed and sworn to by him or her before a notary public, may be introduced in evidence without calling the person as a witness unless a motion challenging the test procedures or results

has been filed within thirty (30) days before the hearing and bond is posted in an amount sufficient to cover the costs of the person's appearance to testify.

(C)(i) If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one (1) person's witnessing the procedure or extraction, packaging, and mailing of the samples and by one (1) person's signing for the samples at the place where the samples are subject to the testing procedure.

(ii) Submission of the affidavits along with the submission of the test results shall be competent evidence to establish the chain of custody of those specimens.

(D) Whenever a court orders scientific testing for drug or alcohol abuse and one (1) of the parties refuses to submit to the testing, that refusal shall be disclosed at trial and may be considered civil contempt of court.

(f) Except as otherwise provided in this subchapter, the Arkansas Rules of Civil Procedure shall apply to all proceedings and the Arkansas Rules of Criminal Procedure shall apply to delinquency proceedings.

(g) All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Criminal Procedure.

(h)(1) The petitioner in all proceedings shall bear the burden of presenting the case at hearings.

(2)(A) The following burdens of proof shall apply:

(i) Proof beyond a reasonable doubt in delinquency hearings;

(ii) Proof by a preponderance of the evidence in dependency-neglect proceedings, except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., family in need of services, and probation revocation hearings; and

(iii) Proof by clear and convincing evidence for hearings to terminate parental rights, except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., transfer hearings, and in hearings to determine whether or not reunification services shall be provided.

(B) If the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., applies, the following burdens of proof shall apply:

(i) Clear and convincing evidence in probable cause, adjudication, review, and permanency planning hearings; and

(ii) Beyond a reasonable doubt in termination of parental rights hearings that are subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.

(i)(1)(A) All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed.

(B)(i) A member of the General Assembly may attend any hearing held under this subchapter, including a closed hearing, unless the court excludes the member of the General Assembly based on the:

(a) Best interest of the child; or

(b) Court's authority under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Except as otherwise provided by law, a member of the General Assembly who attends a hearing in accordance with subdivision (i)(1)(B)(i) of this section shall not disclose information obtained during his or her attendance at the hearing.

(C)(i)(a) A Child Welfare Ombudsman may attend a hearing held under this subchapter, including a closed hearing.

(b) However, a court may exclude the Child Welfare Ombudsman from a hearing if:

(1) It is in the best interest of the child; or

(2) The reason for the exclusion is based on the authority of the court under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Unless otherwise allowed by law, the Child Welfare Ombudsman shall not disclose information that he or she obtains through his or her attendance at a hearing held under this subchapter.

(2) All other hearings may be closed within the discretion of the court, except that in delinquency cases the juvenile shall have the right to an open hearing, and in adoption cases the hearings shall be closed as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.

(j) Except as provided in § 9-27-502, in any juvenile delinquency proceeding in which the juvenile's fitness to proceed is put in issue by any party or the court, the provisions of § 5-2-301 et seq. shall apply.

(k) In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court.

(l)(1) The Department of Human Services shall provide to foster parents and preadoptive parents of a child in department custody notice of any proceeding to be held with respect to the child.

(2) Relative caregivers shall be provided notice by the original petitioner in the juvenile matter.

(3)(A) The court shall allow foster parents, preadoptive parents, and relative caregivers an opportunity to be heard in any proceeding held with respect to a child in their care.

(B) Foster parents, adoptive parents, and relative caregivers shall not be made parties to the proceeding solely on the basis that the persons are entitled to notice and the opportunity to be heard.

(C) Foster parents, adoptive parents, and relative caregivers shall not be made parties to the proceeding when reunification remains the goal of the case.

(m)(1)(A) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or younger when:

(i) The grandchild resides with this grandparent for at least six (6) continuous months prior to his or her first birthday;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated; and

(iv) Notice to a grandparent under this subdivision (m)(1) shall be given by the department.

(B) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or older when:

(i) The grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(2) For purposes of this subsection, "grandparent" does not mean a parent of a putative father of a child.

(n)(1)(A) The department shall make diligent efforts to identify putative parents in a dependency-neglect proceeding.

(B) Diligent efforts shall include without limitation checking the Putative Father Registry.

(2)(A)(i) A petitioner may name and serve a putative parent as a party under § 9-27-312 to resolve the party status and rights under this section or terminate the rights of the putative parent under § 9-27-341.

(ii) If the petitioner does not name and serve a putative parent as a party in accordance with subdivision (n)(2)(A)(i) of this section, the petitioner shall provide a putative parent with notice under Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding as soon as the putative parent is identified.

(B) The notice shall include information about:

(i) The method of establishing paternity;

(ii) The right of the putative parent to prove significant contacts; and

(iii) The right of the putative parent to be heard by the court.

(C) The petitioner shall provide the notice to the court and the parties to the case.

(3)(A)(i) If the petitioner has named and served a putative parent under this section and § 9-27-311, the court shall resolve the party status of a putative parent and the rights of the putative parent as a putative father.

(ii) A court may consider the termination of the rights of a putative parent under § 9-27-341 if the court finds that the rights of the putative parent as a putative father under subdivision (n)(5) of this section have attached.

(B) The court shall provide a putative parent the opportunity to be heard regarding his or her efforts in establishing paternity and his or her significant contacts with regard to his or her children in dependency-neglect proceedings.

(C) The court shall order a DNA test of each putative parent who is made a party in a dependency-neglect proceeding.

(4) A putative parent has the burden to prove paternity and significant contacts with the child.

(5)(A) Except as provided under subdivision (n)(2)(A) of this section and § 9-27-311, a putative parent shall not be named as a party unless the circuit court determines that the putative parent:

(i) Has established paternity and the circuit court enters an order establishing the putative parent as the parent for the purposes of this subchapter and directs that the parent be added to the case as a party defendant; or

(ii) Has established significant contacts with the juvenile and the circuit court enters an order that putative parent rights have attached and the putative parent shall be added to the case as a party defendant.

(B)(i) If the petitioner has named and served a putative parent under this section and § 9-27-311 and the circuit court finds that the putative parent has established paternity, the court shall:

(a) Enter an order establishing the putative parent as a parent for the purposes of this subchapter; and

(b) Maintain the parent as a party defendant.

(ii) If the petitioner has named and served a putative parent under this section and § 9-27-311 and the circuit court finds that the putative parent has established significant contacts with the juvenile, the court shall:

(a) Enter an order stating that the rights of the putative parent have attached; and

(b) Maintain the putative parent as a party defendant.

(C) If the circuit court finds that the putative parent has not established paternity and significant contacts, the circuit court shall:

(i) Find that the putative parent is not a parent for the purposes of this subchapter;

(ii) Find that the rights of the putative parent have not attached; and

(iii) Dismiss the putative parent from the case with no further notice to the putative parent required.

(6)(A) A circuit court may order a DNA test at any time.

(B) A DNA test that establishes the paternity of the putative parent is sufficient evidence to establish that the putative parent is a parent for purposes of this subchapter and the court shall enter an appropriate order under subdivision (n)(5) of this section.

(7) The rights of a putative parent to appointed counsel are subject to § 9-27-316(h)(3).

(o)(1) If the court determines that the health and safety of the juvenile can be adequately protected and it is in the best interest of the child, unsupervised visitation may occur between a juvenile and a parent.

(2)(A) A petitioner has the burden of proving at every hearing that unsupervised visitation is not in the best interest of a child.

(B) If the court determines that unsupervised visitation between a juvenile and a parent is not in the best interest of the child, visitation between the juvenile and the parent shall be supervised.

(C)(i) A rebuttable presumption that unsupervised visitation is in the best interest of the juvenile applies at every hearing.

(ii) The burden of proof to rebut the presumption is proof by a preponderance of the evidence.

(D)(i) If the court orders supervised visitation, the parent from whom custody of the juvenile has been removed shall receive a minimum of four (4) hours of supervised visitation per week.

(ii) The court may order less than four (4) hours of supervised visitation if the court determines that the supervised visitation:

(a) Is not in the best interest of the juvenile; or

(b) Will impose an extreme hardship on one (1) of the parties.

(p) When visitation is ordered between a juvenile and the parent:

(1)(A) A parent's positive result from a drug test is insufficient to deny the parent visitation with a juvenile.

(B) If at the time that visitation between the parent and a juvenile occurs a parent is under the influence of drugs or alcohol, exhibits behavior that may create an unsafe environment for a child, or appears to be actively impaired, the visitation may be cancelled; and

(2) A relative or fictive kin may transport a juvenile to and from visits with a parent if:

(A) It is in the best interest of a child;

(B) The relative or fictive kin submits to a background check and a child maltreatment registry check; and

(C) The relative or fictive kin meets the driving requirements established by the department.

(q)(1) A court shall set a hearing to address the entry of a written order if:

(A) The written order is not provided to the court for entry within the time specified under this subchapter; and

(B) A party files a motion for a hearing to address the entry of the written order.

(2)(A) The court shall conduct a hearing to address the entry of the written order within thirty (30) days from the date on which the motion for a hearing to address the entry of the written order is filed.

(B) A hearing to address the entry of a written order may be the next scheduled hearing in the proceeding if the hearing to address the entry of the written order is being held within thirty (30) days from the date on which the motion for a hearing to address the entry of the written order is filed.

(C) The court is not required to conduct a hearing to address the entry of a written order if the written order is submitted to the court.

(3) The court shall reassign the preparation of the written order as needed.

History. Acts 1989, No. 273, § 24; 2003, No. 1166, § 14; 2003, No. 1319, 1993, No. 758, § 5; 1995, No. 533, § 6; § 12; 2007, No. 587, § 12; 2009, No. 1311, 1997, No. 1118, § 2; 1999, No. 401, § 5; § 1; 2011, No. 591, § 6; 2011, No. 1175, § 1999, No. 1192, § 17; 2001, No. 987, § 3; 5; 2013, No. 1055, § 9; 2015, No. 1022, 2001, No. 1497, § 2; 2001, No. 1503, § 5; § 3; 2017, No. 701, § 1; 2017, No. 1111,

§ 2; 2019, No. 329, § 3; 2019, No. 541, § 4; 2019, No. 558, §§ 1-3; 2019, No. 945, § 3.

A.C.R.C. Notes. Acts 2019, No. 329, § 1, provided: “Legislative intent. The General Assembly recognizes:

“(1) That it is the duty of the General Assembly to initiate intelligent legislative reform that benefits the citizens of Arkansas;

“(2) That many families in Arkansas are involved in child welfare cases with the Department of Human Services;

“(3) That these families sometimes turn to members of the General Assembly for assistance when their families are negatively affected by certain limitations in the child welfare process;

“(4) That it is important to preserve a family unit when possible;

“(5) That the General Assembly’s ability to initiate legislative reform with regard to child welfare is impeded by the nontransparent nature of child welfare proceedings, closed juvenile hearings, and other protections that prevent the General Assembly from adequately observing and reviewing the child welfare process; and

“(6) That in order to intelligently initiate reform, the General Assembly requires an expansion of its ability to observe and review all aspects of the child welfare process.”

Acts 2019, No. 945, § 1, provided: “Legislative intent. It is the intent of the

General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas.”

Amendments. The 2015 amendment added (o) [now (n)].

The 2017 amendment by No. 701 rewrote (l)(3)(C).

The 2017 amendment by No. 1111 added (p) and (q) [now (o) and (p)].

The 2019 amendment by No. 329 added the (i)(1)(A) designation; and added (i)(1)(B).

The 2019 amendment by No. 541 rewrote (o)(2)(A); substituted “petitioner” for “department” in (o)(2)(C); redesignated former (o)(3) as (o)(3)(B); added (o)(3)(A) and (o)(3)(C); in (o)(4), inserted “paternity and” and deleted “so that putative rights attach” following “child”; rewrote and redesignated former (o)(5) as (o)(5)(A); added (o)(5)(B) and (o)(5)(C); and, in (o)(6)(B), substituted “a parent for purposes of this subchapter” for “the legal parent” and substituted “subdivision (o)(5)” for “subdivision (o)(5)(A)” [subsection (o) is now subsection (n)].

The 2019 amendment by No. 558 inserted “at every hearing” in (p)(2)(A) [now (o)(2)(A)]; added (p)(2)(C) and (p)(2)(D) [now (o)(2)(C) and (D)]; and added (r) [now (q)].

The 2019 amendment by No. 945 added the (i)(1)(A) designation; and added (i)(1)(B) (now (i)(1)(C)).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Juvenile Code, 26 U. Ark. Little Rock L. Rev. 417.

CASE NOTES

ANALYSIS

Burden of Proof.
Evidence.
Jury Trial.
Parties.

Burden of Proof.

Trial court erred in finding that father’s child was a dependent-neglected child under § 9-27-303 because, after the father

was incarcerated, there were two different family members who stated they were willing to care for the child; thus, the state failed to prove by a preponderance of the evidence that the child was neglected. *Moiser v. Ark. Dep’t of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

On appeal of a permanent child custody order in a dependency proceeding, the father counsel’s erred by assuming the burden of proof was clear and convincing

evidence. That heightened burden only applied if the father's parental rights were being terminated under subdivisions (h)(2)(B) and (C) of this section. *Collier v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 565 (2009).

Evidence.

Trial court did not err in awarding permanent custody of appellant's child to the child's father because although appellant had fully complied at times with the case plan and had the child returned to her custody, she was still not capable of caring for her and acting in her best interest, according to the evidence presented. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was without merit. *Harris v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 427 (2012).

Award of permanent custody of the child to his maternal grandfather and his wife was affirmed because evidence was presented that appellant had not completed the domestic-violence classes as directed and appellant admitted that she showed poor judgment in having a relationship with her boyfriend and that she was also slow in returning paperwork to the Department of Human Service to complete a background check before the fifteen-month review hearing. *Penn v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 327 (2013).

It was proper to award permanent custody to a child's grandparents because the evidence was sufficient to support conclusions that it was uncertain what the parent would do with regard to progress toward the case plan requirements, that the child needed permanency immediately, and that the parent's lack of services were due to her failure to keep the Department of Human Services properly informed of her whereabouts. *Burns v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 521, 429 S.W.3d 366 (2013).

Trial court did not err in adjudicating the child dependent-neglected where the physician's testimony showed that the child suffered from failure to thrive as a result of the mother's inability to properly feed her, as she skipped feedings and failed to give her the proper volume of milk, he did not believe that the mother could provide the proper nutrition to the child, and a Cherokee Nation child-welfare specialist testified that the Depart-

ment of Human Services made active efforts to prevent the child's removal from the mother, and the physician testified that the medical team tried to work with the mother during the child's hospitalization but she was unresponsive. *Matthews v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 359 (2015).

Circuit court did not clearly err in adjudicating a child dependent-neglected because it had more than a preponderance of the evidence of a substantial risk of serious harm to the child; the Department of Human Services investigated and substantiated reports of severe environmental neglect in the parents' household, and it attempted, unsuccessfully, to resolve the environmental neglect issues. *Bean v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 350, 498 S.W.3d 315 (2016).

Trial court did not clearly err in finding that a child was dependent-neglected based on abuse, neglect, and parental unfitness where testimony showed that the mother was violent and verbally abusive toward the child, she had been arrested for assaulting the child, she had not obtained counseling for the child despite ongoing behavioral issues, and her home was messy and unsanitary. *Allen-Grace v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 83, 542 S.W.3d 205 (2018).

Trial court's finding that two children were dependent-neglected was affirmed given the abuse findings for their sibling. *Allen-Grace v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 83, 542 S.W.3d 205 (2018).

Evidence was sufficient to support a finding that a child was dependent-neglected because a neighbor witnessed the child having vaginal and oral sex with a young teenage male; an investigator testified that the conclusion of the Arkansas State Police investigation was a true finding of "sexually aggressive behavior". *Salinas v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 72, 572 S.W.3d 389 (2019).

Circuit court's finding that a child was a dependent-neglected juvenile, at substantial risk of serious harm based on neglect and parental unfitness, was not clearly erroneous because the mother's lack of supervision was directly connected to the sexual assault a teenage male perpetrated on the child; despite the circuit court's order to provide "line-of-sight" supervision and the "red flags" the mother saw, she

permitted the child to play with the male unsupervised, which resulted in sexual abuse; and this was the second time in two years that the child had been sexually abused while in her mother's care. *Salinas v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 72, 572 S.W.3d 389 (2019).

Circuit court's finding that three other children of the mother were dependent-neglected was not clearly against the preponderance of the evidence because the court did not make an automatic finding of dependency-neglect but made a specific finding that all the children were at substantial risk of harm as a result of the mother's acts or omissions; there was evidence that one of the children was experiencing mental-health issues due to the guilt she suffered when her sibling was sexually abused. *Salinas v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 72, 572 S.W.3d 389 (2019).

Circuit court's finding that a child was dependent-neglected was not clearly erroneous where the evidence showed that the putative father had punched the mother in the face while she was holding the child and yet the mother initially inquired about dropping the criminal charges against the putative father. The evidence that the child had been subjected to her parents' ongoing domestic abuse and had been placed in harm's way herself after having been previously injured showed that she was at substantial risk of serious harm as a result of neglect and parental unfitness. The mother's actions taken after the child was removed from her custody did not negate her failure to act to protect the child while she was in the mother's care. *Araujo v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 181, 574 S.W.3d 683 (2019).

Trial court's finding the children dependent-neglected was not clearly erroneous because the evidence showed that one of the children had numerous injuries that the mother was unable to explain, the mother did not take the child to the doctor for her finger injury but waited because she had an appointment already scheduled two days later, and the injury required the child to stay in the hospital several days because of fears of infection, a need for surgery, and loss of the finger. *McCord v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 244, 599 S.W.3d 374 (2020).

Jury Trial.

Defendant charged with delinquency and theft had no right to a jury trial. *Elkins v. State*, 7 Ark. App. 166, 646 S.W.2d 15 (1983) (decision under prior law).

The revisions found in the Juvenile Code of 1989 do not provide for a jury trial. *Valdez v. State*, 33 Ark. App. 94, 801 S.W.2d 659 (1991).

Parties.

Circuit court erred in holding that the foster parents had no right to adopt and therefore no right to intervene in an adoption proceeding involving their foster child under Ark. R. Civ. P. 24. Subdivision (1)(3)(B) of this section contemplated that foster parents seeking to adopt a child might become parties to the dependency-neglect proceeding. *Schubert v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 113 (2010).

Cited: *Smith v. State*, 307 Ark. 223, 818 S.W.2d 945 (1991); *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994); *Ark. Dep't of Human Servs. v. Hardy*, 316 Ark. 119, 871 S.W.2d 352 (1994); *Ark. Best Corp. v. General Elec. Capital Corp.*, 317 Ark. 238, 878 S.W.2d 708 (1994); *Mason v. State*, 323 Ark. 361, 914 S.W.2d 751 (1996); *Johnston v. Ark. Dep't of Human Servs.*, 55 Ark. App. 392, 935 S.W.2d 589 (1996); *K.W. v. State*, 327 Ark. 205, 937 S.W.2d 658 (1997); *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005); *Ark. Dep't of Health & Human Servs. v. Mitchell*, 100 Ark. App. 45, 263 S.W.3d 574 (2007); *Seago v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 767, 360 S.W.3d 733 (2009); *Tadlock v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 841, 372 S.W.3d 403 (2009); *Jackson v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 246, 374 S.W.3d 198 (2010); *McCann v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 828 (2010); *Maynard v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 82, 389 S.W.3d 627 (2011); *Chambers v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 91 (2011); *Duvall v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 261, 378 S.W.3d 873 (2011); *Gaer v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 516 (2012); *Hernandez v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 424 (2013); *Ward v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 491 (2014); *Goodwin v. Ark. Dep't of Human Servs.*, 2014

Ark. App. 599, 445 S.W.3d 547 (2014); Turner v. Ark. Dep't of Human Servs., 2014 Ark. App. 655 (2014); Billingsley v. Ark. Dep't of Human Servs., 2015 Ark. App. 348 (2015); Merritt v. Ark. Dep't of Human Servs., 2015 Ark. App. 503, 471 S.W.3d 231 (2015); Harris v. Ark. Dep't of Human Servs., 2015 Ark. App. 508, 470

S.W.3d 316 (2015); D.F. v. State, 2015 Ark. App. 656, 476 S.W.3d 189 (2015); Hambrick v. Ark. Dep't of Human Servs., 2016 Ark. App. 458, 503 S.W.3d 134 (2016); A.W. v. State, 2017 Ark. App. 34, 510 S.W.3d 811 (2017); Choate v. Ark. Dep't of Human Servs., 2017 Ark. App. 319, 522 S.W.3d 156 (2017).

9-27-326. Detention hearing.

(a) If a juvenile is taken into custody on an allegation of delinquency, violation of Division of Youth Services aftercare, violation of probation, or violation of a court order and not released by the law enforcement officer or intake officer, a detention hearing shall be held as soon as possible but no later than seventy-two (72) hours after the juvenile was taken into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day. Otherwise, the juvenile shall be released.

(b) Prior written notice of the time, place, and purpose of the detention hearing shall be given to:

- (1) The juvenile;
- (2) The juvenile's attorney; and
- (3)(A) The juvenile's parent, guardian, or custodian.

(B) However, if the court finds after a reasonable, diligent effort that the petitioner was unable to notify the parent, guardian, or custodian, the hearing may proceed without notice to that party.

(c) The petitioner shall have the burden of proof by clear and convincing evidence that the restraint on the juvenile's liberty is necessary and that no less restrictive alternative will reduce the risk of flight, or of serious harm to property, or to the physical safety of the juvenile or others.

(d) During the detention hearing, the court shall:

- (1) Inform the juvenile:
 - (A) Of the reasons continued detention is being sought;
 - (B) That he or she is not required to say anything, and that anything he or she says may be used against him or her;
 - (C) That he or she has a right to counsel; and
 - (D) That before the hearing proceeds further he or she has the right to communicate with his or her attorney, parent, guardian, or custodian, and that reasonable means will be provided for him or her to do so;

(2) Admit testimony and evidence relevant only to determination that probable cause exists that the juvenile committed the offense as alleged and that detention of the juvenile is necessary; and

(3) Assess the following factors in determining whether to release the juvenile prior to further hearings in the case:

- (A) Place and length of residence;
- (B) Family relationships;
- (C) References;

- (D) School attendance;
- (E) Past and present employment;
- (F) Juvenile and criminal records;
- (G) The juvenile's character and reputation;
- (H) Nature of the charge being brought and any mitigating or aggravating circumstances;
- (I) Whether detention is necessary to prevent imminent bodily harm to the juvenile or to another;
- (J) The possibility of additional violations occurring if the juvenile is released;
- (K) Factors that indicate the juvenile is likely to appear as required; and
- (L) Whether conditions should be imposed on the juvenile's release.

(e)(1) The court shall release the juvenile when there is a finding that no probable cause exists that the juvenile committed the offense as alleged.

(2) The court, upon a finding that detention is not necessary, may release the juvenile:

- (A) Upon his or her personal recognizance;
- (B) Upon an order to appear;
- (C) To his or her parent, guardian, or custodian upon written promise to bring the juvenile before the court when required;
- (D)(i) To the care of a qualified person or agency agreeing to supervise the juvenile and assist him or her in appearing in court.
- (ii) Provided, that for purposes of this subdivision (e)(2)(D), "qualified agency" does not include the Department of Human Services or any of its divisions;
- (E)(i) Under the supervision of the probation officer or other appropriate public official.
- (ii) However, for purposes of this subdivision (e)(2)(E), "appropriate public official" does not include the department;
- (F) Upon reasonable restrictions on activities, movements, associations, and residences of the juvenile;
- (G) On bond to his or her parent, guardian, or custodian; or
- (H) Under such other reasonable restrictions to ensure the appearance of the juvenile.

(3) If the court determines that only a money bond will ensure the appearance of the juvenile, the court may require:

- (A) An unsecured bond in an amount set by the judicial officer;
- (B) A bond accompanied by a deposit of cash or securities equal to ten percent (10%) of the face amount set by the court that shall be returned at the conclusion of the proceedings if the juvenile has not defaulted in the performance of the conditions of the bond; or
- (C) A bond secured by deposit of the full amount in cash, or by other property, or by obligation of qualified securities.

(4) Orders of conditional release may be modified upon notice, hearing, and good cause shown.

(5)(A) If the court releases a juvenile under subdivision (e)(2)(D) of this section, the court may, if necessary for the best interest of the juvenile, request that the department immediately initiate an investigation as to whether the juvenile is in imminent danger or a situation exists whereby the juvenile is dependent-neglected.

(B) The court shall not place preadjudicated juveniles in the custody of the department except as provided in § 12-12-516 [repealed].

(f)(1) If the juvenile who is being detained is also in the custody of the department pursuant to a family in need of services or dependency-neglect petition and the court does not keep the juvenile in detention, then any issues regarding placement of the juvenile shall be addressed only in the family in need of services or dependency-neglect case and shall not be an issue addressed, nor shall any orders be entered in the delinquency case regarding placement of the juvenile.

(2) Within ten (10) days of the entry of any order in the delinquency case, the prosecuting attorney shall file a copy of the order in the juvenile's dependency-neglect or family in need of services case.

History. Acts 1989, No. 273, § 25; 2003, No. 1319, § 13; 2007, No. 587, § 13; 1995, No. 533, § 7; 2001, No. 987, § 4; 2009, No. 956, § 9.

CASE NOTES

ANALYSIS

Construction.
Jurisdiction.

Construction.

The word "shall," relating to the duties of the judge, requires mandatory compliance. *Baumer v. State*, 300 Ark. 160, 777 S.W.2d 847 (1989) (decision under prior law).

Jurisdiction.

Former statute, when construed with the rest of the Arkansas Juvenile Code,

did not require that all juveniles under eighteen years of age be charged and tried for criminal acts in juvenile court; a prosecuting attorney had discretion to charge juveniles over fifteen years of age in juvenile, municipal, or circuit court. *Sargent v. Cole*, 269 Ark. 121, 598 S.W.2d 749 (1980) (decision under prior law).

Cited: *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992).

9-27-327. Adjudication hearing.

(a)(1)(A) An adjudication hearing shall be held to determine whether the allegations in a petition are substantiated by the proof.

(B)(i) If the court finds that the juvenile is dependent-neglected, the court shall determine whether a noncustodial parent contributed to the dependency-neglect and whether the noncustodial parent is a fit parent for purposes of custody or visitation.

(ii) A noncustodial parent in subdivision (a)(1)(B)(i) of this section is presumed to be a fit parent.

(iii)(a) If no prior court order has been entered into evidence concerning custody or visitation with the noncustodial parent of the juvenile subject to the dependency-neglect petition, the petitioner

shall, and any party may, provide evidence to the court whether the noncustodial parent is unfit for purposes of custody or visitation.

(b) The petitioner shall provide evidence as to whether the noncustodial parent contributed to the dependency-neglect.

(iv)(a) The court may transfer temporary custody or permanent custody to the noncustodial parent after a review of evidence and a finding that it is in the best interest of the juvenile to transfer custody, or the court may order visitation with the noncustodial parent.

(b) An order of transfer of custody to the noncustodial parent does not relieve the Department of Human Services of the responsibility to provide services to the parent from whom custody was removed, unless the court enters an order to relieve the department of the responsibility.

(v) If the court determines that the child cannot safely be placed in the custody of the noncustodial parent, the court shall make specific findings of fact regarding the safety factors that need to be corrected by the noncustodial parent before placement or visitation with the juvenile.

(2) Unless the court finds that a removal occurred due to an emergency and the agency had no prior contact with the family or the child, evidence shall be presented to the court regarding all prior contact between the agency and the juvenile or the family before a finding of reasonable efforts to prevent removal by the department.

(3) A finding of reasonable efforts to prevent removal of the juvenile is void if the court determines that the department failed to disclose all prior contact between the agency and juvenile or the family before the finding.

(4)(A) The dependency-neglect adjudication hearing shall be held within thirty (30) days after the probable cause hearing under § 9-27-315.

(B) On a motion of the court or any party, the court may continue the adjudication hearing up to sixty (60) days after the removal for good cause shown.

(C)(i) The court may continue an adjudication hearing beyond the sixty-day limitation provided in subdivision (a)(4)(B) of this section in extraordinary circumstances.

(ii) As used in this subdivision (a)(4)(C), "extraordinary circumstances" includes without limitation the following circumstances:

(a) The Supreme Court orders the suspension of in-person court proceedings; and

(b) One (1) of the following has occurred:

(1) The President of the United States has declared a national emergency; or

(2) The Governor has declared a state of emergency or a statewide public health emergency.

(5) If the juvenile has previously been adjudicated a dependent-neglected juvenile in the same case in which a motion for a change of

custody has been filed to remove the juvenile from the custody of a parent, a subsequent adjudication is required if the ground for the removal is not the same as the ground previously adjudicated.

(b) If a juvenile is in detention, an adjudication hearing shall be held, unless the juvenile or a party is seeking an extended juvenile jurisdiction designation, not later than fourteen (14) days from the date of the detention hearing unless waived by the juvenile or good cause is shown for a continuance.

(c) In extended juvenile jurisdiction offender proceedings, the adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(d) Following an adjudication in which a juvenile is found to be delinquent, dependent-neglected, or a member of a family in need of services, the court may order any studies, evaluations, or predisposition reports, if needed, that bear on disposition.

(e)(1) All such reports shall be provided in writing to all parties and counsel at least two (2) days prior to the disposition hearing.

(2) All parties shall be given a fair opportunity to controvert any parts of such reports.

(f) In dependency-neglect cases, a written adjudication order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

History. Acts 1989, No. 273, § 26; 1997, No. 1227, § 5; 1999, No. 401, § 6; 1999, No. 1192, § 18; 2001, No. 1503, § 6; 2003, No. 1319, §§ 14, 15; 2007, No. 587, § 14; 2009, No. 956, § 10; 2011, No. 792, § 9; 2013, No. 1055, § 19; 2015, No. 1017, § 10; 2015, No. 1024, § 4; 2017, No. 701, § 2; 2020, No. 144, § 39.

A.C.R.C. Notes. Acts 2020, No. 144, § 42, provided: "Retroactivity. Sections 39 through 41 of this act apply retroactively to cases that are pending as of the effective date of Sections 39 through 41 of this act."

Amendments. The 2015 amendment by No. 1017 inserted (a)(2) [now

(a)(1)(B)(i) and (v)]; inserted (a)(3) and (4) [now (a)(2) and (3)]; rewrote and redesignated former (a)(2) as (a)(5) [now (a)(4)]; and redesignated former (a)(3) as (a)(6) [now (a)(5)].

The 2015 amendment by No. 1024 redesignated (a)(1) as (a)(1)(A); and added (a)(1)(B) [now (a)(1)(B)(i) and (v)].

The 2017 amendment substituted "determine" for "address" in (a)(1)(B)(i); inserted (a)(1)(B)(ii) through (a)(1)(B)(iv); and redesignated former (a)(1)(B)(ii) as (a)(1)(B)(v).

The 2020 amendment added (a)(4)(C).

Cross References. No reunification hearing, § 9-27-365.

CASE NOTES

ANALYSIS

Adjudication.
Appellate Review.
Burden of Proof.
Evidence.
Evidence, Admission.
Hearing Required.
Notice.
Reasonable Efforts.

Second Adjudication.
Timeliness.

Adjudication.

Trial court did not adjudicate the child as dependent-neglected based merely on the fact that her siblings had previously been adjudicated dependent-neglected; instead, the severe and still-unexplained injuries that a sibling sustained as a re-

sult of abuse and neglect in the mother's custody placed the child at substantial risk of serious harm, and the adjudication was proper. *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 552, 473 S.W.3d 31 (2015).

Decision to begin a trial home placement with the mother did not render the dependent-neglected adjudication illogical; the trial home placement was contingent on the mother's compliance with a detailed safety plan and § 9-27-329 requires the court to give preference to the least restrictive disposition consistent with the juvenile's best interest. Although the child was at substantial risk of serious harm, a safety plan and continued services would help to minimize the risk of harm in a trial home placement. *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 552, 473 S.W.3d 31 (2015).

Trial court's adjudication of the daughter as dependent-neglected was upheld because the finding was based on parental unfitness and neglect and the mother focused only on the trial court's finding of neglect under Garrett's Law (subdivision (B)(1) of the definition of "Neglect" in § 9-27-303); the mother did not challenge the trial court's finding that she was an unfit parent, and only one ground was necessary to support the adjudication of dependency-neglect. *Garner v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 328, 603 S.W.3d 858 (2020).

Appellate Review.

Because the mother did not appeal from the adjudication order, even though she could have done so under Ark. Sup. Ct. & Ct. App. R. 6-9(a)(1)(A), the circuit court's findings in the order were no longer open to challenge by the mother and precluded from review in an appeal from a subsequent order. *Porter v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 342 (2011).

In a case in which a mother appealed from an order of the circuit court adjudicating her son dependent-neglected, the appellate court agreed with the mother's counsel that an appeal of the circuit court's ruling would be frivolous and found that counsel adequately briefed the remaining adverse rulings. *Billingsley v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 348 (2015).

Although mother argued that the circuit court erred by granting permanent

custody to the children's fathers under this section (the adjudication statute) following the denial of the Department of Human Services' no-reunification motion because she lacked notice, the argument was not preserved for appellate review as the mother failed to object and make her specific due process argument below. *Mixon v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 554, 590 S.W.3d 746 (2019).

Court of Appeals was precluded from addressing a father's argument that the evidence did not support a dependency-neglect finding because the mother conceded the sufficiency of the evidence supporting the adjudication; further, the appellate court did not address the father's argument as to his contribution or lack thereof to the dependency-neglect because a dependency-neglect adjudication occurs without reference to which parent committed the acts or omissions leading to the adjudication. *Day v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 51, 595 S.W.3d 26 (2020).

Burden of Proof.

State failed to establish by a preponderance of the evidence that father's child should be adjudicated dependent under § 9-27-303 because, after the father was incarcerated, there were two different family members who stated they were willing to care for the child. *Moiser v. Ark. Dep't of Human Servs.*, 95 Ark. App. 32, 233 S.W.3d 172 (2006).

Court erred in adjudicating the children as dependent-neglected, because the Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. *Johnson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 244, 413 S.W.3d 549 (2012).

Preponderance of the evidence supported the trial court's decision adjudicating appellant's children dependent-neglected because they were in her care the day she was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Because appellant's boys were in her apartment alone while she was in another apartment using drugs, the facts supported the allegation

that appellant's conduct constituted neglect and placed her children at risk of substantial harm. *Gaer v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 516 (2012).

Evidence.

Minor children removed from a ministry compound were properly adjudicated dependent-neglected where their father was aware of a pattern and practice of severe physical beatings, failed to protect them against physical abuse, and endorsed and facilitated illegal marriages of underage females to adults in the compound. *Thorne v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 443, 374 S.W.3d 912 (2010), overruled in part, *Myers v. Ark. Dep't of Human Servs.*, 2011 Ark. 182, 380 S.W.3d 906.

Trial court could reasonably have concluded that certain medications had an impact on the mother's ability to appropriately supervise the children and to the extent the second adjudication was not superfluous, the trial court did not clearly err in adjudicating the children dependent-neglected. *Scott v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 431 (2015).

Trial court did not clearly err in finding that a child was dependent-neglected based on abuse, neglect, and parental unfitness where testimony showed that the mother was violent and verbally abusive toward the child, she had been arrested for assaulting the child, she had not obtained counseling for the child despite ongoing behavioral issues, and her home was messy and unsanitary. *Allen-Grace v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 83, 542 S.W.3d 205 (2018).

Trial court's finding that two children were dependent-neglected was affirmed given the abuse findings for their sibling. *Allen-Grace v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 83, 542 S.W.3d 205 (2018).

Circuit court did not clearly err in finding neglect based on a failure to thrive caused by inadequate feeding; contrary to the mother's assertion, the inconsistencies and contradictions in her statements concerning what she was feeding the child and how much she was feeding him were proper considerations when evaluating the child's well-being. *Bales v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 351, 552 S.W.3d 497 (2018).

Circuit court did not clearly err in adjudicating a child dependent-neglected be-

cause a preponderance of the evidence showed a mother undisputedly drove while intoxicated with the child in the car and was charged with a crime related to possession of a narcotic without a prescription, creating a dangerous situation and placing the child at substantial risk of serious harm, despite the mother's subsequent treatment plan compliance. *Reeves v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 72, 595 S.W.3d 401 (2020).

Circuit court did not clearly err in finding that a 14-year-old daughter was dependent-neglected based on her reports of the father's extreme and repeated cruelty and sexual abuse. *Skalski v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 433 (2020).

Evidence, Admission.

Appellate court could not say that the trial court abused its discretion in a dependency-neglect adjudication proceeding in denying the mother's request to admit a urinalysis document showing that her child tested negative for illegal substances at birth; the proffered document was not part of the medical records subpoenaed by DHS that had been verified by the hospital and there was no separate verification for the proffered document; the mother had contended that the proffered document was admissible under the Hospital Records Act, § 16-46-306. *Garner v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 328, 603 S.W.3d 858 (2020).

Hearing Required.

Trial court erred when it failed to conduct a scheduled adjudication hearing and take evidence on the issue of whether a mother's children were dependent-neglected and whether the assessments, evaluations, and services provided by the Department of Human Services were effective. Because there was no custody order in place, the trial court's order closing the case had the effect of returning the children to the legal custody of their mother without first addressing the need to protect the juveniles from further harm. *Ark. Dep't of Human Servs. v. Veasley*, 2016 Ark. App. 175 (2016).

Notice.

Circuit court erred in finding aggravated circumstances because the father was not effectively placed on notice that he was required to defend against an allegation of aggravated circumstances,

and the motion to amend to conform to the evidence was entirely unrelated to the aggravated circumstances matter. Due process dictates that parents be afforded an opportunity to properly defend against an allegation of aggravated circumstances, and the same due process protections apply at the adjudication stage of the dependency-neglect proceedings as apply to termination of parental rights. *Skalski v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 433 (2020).

Reasonable Efforts.

Trial court did not clearly err in continuing custody in the Department of Human Services (DHS) where the mother had failed to take advantage of parenting classes designed to provide safe and appropriate discipline techniques, and the trial court specifically found that continuing custody with DHS was in the children's best interests and for their protection and safety. *Walker v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 627, 534 S.W.3d 184 (2017).

Second Adjudication.

Trial court did not close the case after awarding custody of the children to the parents and another individual following the first adjudication, and both adjudications stemmed from allegations of inadequate supervision; thus, the second adjudication was not necessary and had no practical effect on the parents' position because their children were still dependent-neglected as a result of the first adjudication. *Scott v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 431 (2015).

Timeliness.

Although the 14-day requirement of this section is mandatory, it is not jurisdictional; a juvenile's failure to demand a hearing waived the right to insist on a timely hearing, particularly since subsection (b) of this section expressly provides that the time limitation may be waived by the juvenile. *Robinson v. State*, 41 Ark. App. 20, 847 S.W.2d 49 (1993).

Where child was taken to a hospital twice with multiple bone fractures, the trial court's refusal to grant the parents' request for a continuance to determine if the child had brittle-bone syndrome was not prejudicial because the trial court set the adjudication hearing as far out as possible, with the expectation that test

results would be returned by then. *Neves da Rocha v. Ark. Dep't of Human Servs.*, 93 Ark. App. 386, 219 S.W.3d 660 (2005), cert. denied, 549 U.S. 811, 127 S. Ct. 346, 166 L. Ed. 2d 21 (2006).

While the circuit court's adjudication hearing and adjudication order were unquestionably untimely, the court's violation did not cause it to lose jurisdiction; the General Assembly did not provide a sanction for the violation and it was in the child's best interests that the mother's parental rights be terminated. *Turner v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 52, 539 S.W.3d 635 (2018).

While it was unfortunate that the adjudication hearing was not held soon after one child had been taken into custody, which was what was contemplated by this section, the parents did not object to the continuances, and they did not raise any argument to the trial court about the timeliness of the hearing or the order; the appellate court rejected the mother's claim that the child had not been adjudicated dependent-neglected because the trial court lacked subject-matter jurisdiction based on the untimely hearing. *Parrell v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 108, 538 S.W.3d 264 (2018) (sub. op. on reh'g).

Circuit court did not err in adjudicating a mother's child dependent-neglected because it did not lose jurisdiction by failing to enter a written adjudication order within 30 days of the adjudication hearing, and to reverse would be contrary to the child's best interest; the circuit court did not commit reversible error by failing to enter a timely written adjudication order because subsection (f) of this section provided no specific consequences for the failure to abide by its mandatory dictates. *Picinich v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 288, 549 S.W.3d 916 (2018).

Although the legislature has failed to incorporate statutory consequences for a circuit court's failure to comply with the statutory timelines in the juvenile code, the circuit courts are strongly encouraged to abide by these timelines because compliance is in the juveniles' best interests. *Picinich v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 288, 549 S.W.3d 916 (2018).

Circuit court's untimely orders of probable cause and adjudication, which were both entered beyond the statutorily prescribed 30 days, did not warrant reversal or any other sanction. *Westbrook v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 352, 584 S.W.3d 258 (2019).

Cited: *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Dover v. Ark. Dep't of Human Servs.*, 62 Ark. App. 37,

968 S.W.2d 635 (1998); *Broderick v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 771, 358 S.W.3d 909 (2009); *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 503, 471 S.W.3d 231 (2015); *Harris v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 508, 470 S.W.3d 316 (2015); *Hambrick v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 458, 503 S.W.3d 134 (2016).

9-27-328. Removal of juvenile.

(a) Before a circuit court may order any dependent-neglected juvenile or family in need of services juvenile removed from the custody of his or her parent, guardian, or custodian and placed with the Department of Human Services or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall order family services appropriate to prevent removal unless the health and safety of the juvenile warrant immediate removal for the protection of the juvenile.

(b) When the court orders a dependent-neglected or family in need of services juvenile removed from the custody of a parent, guardian, or custodian and placed in the custody of the department or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall make these specific findings in the order:

(1) In the initial order of removal, the court must find:

(A) Whether it is contrary to the welfare of the juvenile to remain at home;

(B) Whether the removal and the reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile; and

(C) Whether the removal is in the best interest of the juvenile; and

(2) Within sixty (60) days of removal, the court must find:

(A) Which family services were made available to the family before the removal of the juvenile;

(B) What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile, taking into consideration whether or not the juvenile could safely remain at home while family services were provided;

(C) Why efforts made to provide the family services described did not prevent the removal of the juvenile; and

(D) Whether efforts made to prevent the removal of the juvenile were reasonable, based upon the needs of the family and the juvenile.

(c) When the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services being provided, the responsible state agency shall be deemed to have made reasonable efforts to prevent or eliminate the need for removal.

(d) When the court finds that the department's preventive or reunification efforts have not been reasonable, but further preventive or

reunification efforts could not permit the juvenile to remain safely at home, the court may authorize or continue the removal of the juvenile but shall note the failure by the department in the record of the case.

(e)(1) In all instances of removal of a juvenile from the home of his or her parent, guardian, or custodian by a court, the court shall set forth in a written order:

- (A) The evidence supporting the decision to remove;
- (B) The facts regarding the need for removal; and
- (C) The findings required by this section.

(2) The written findings and order shall be filed by the court or by a party or party's attorney as designated by the court within thirty (30) days of the date of the hearing at which removal is ordered or prior to the next hearing, whichever is sooner.

(f) Within one (1) year from the date of removal of the juvenile and annually thereafter, the court shall determine whether the department has made reasonable efforts to obtain permanency for the juvenile.

(g)(1) If the court transfers custody of a child to the department, the court shall issue an order containing the following determinations regarding the educational issues of the child and whether the parent or guardian of the child may:

(A) Have access to the child's school records;

(B) Obtain information on the current placement of the child, including the name and address of the child's foster parent or provider, if the parent or guardian has access to the child's school records; and

(C) Participate in school conferences or similar activities at the child's school.

(2) If the court transfers custody of a child to the department, the court may appoint an individual to consent to an initial evaluation of the child and serve as the child's surrogate parent under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as it existed on February 1, 2007.

History. Acts 1989, No. 273, § 27; § 16; 2007, No. 587, § 15; 2013, No. 1055, 1995, No. 533, § 8; 1995, No. 1337, §§ 3, § 10.
4; 1997, No. 1227, § 6; 1999, No. 401, § 7;
1999, No. 1340, § 14; 2001, No. 1503, § 7;
2003, No. 1166, § 15; 2003, No. 1319,

Cross References. No reunification hearing, § 9-27-365.

RESEARCH REFERENCES

ALR. Construction and Application of Disabilities Education Act, (20 U.S.C. §§ 1400 et seq.). 10 A.L.R. Fed. 3d Art. 2 (2016).
34 C.F.R. § 300.502, and Prior Codifications, Providing for Independent Educational Evaluation under Individuals With

CASE NOTES

ANALYSIS

Dependent-Neglected.

Family Services.

Findings of Fact.

First Contact.

Reasonable Efforts.

Unfitness of Natural Parent.

Dependent-Neglected.

Children were improperly removed from a father's care and determined to be dependent-neglected under § 9-27-303 because the evidence did not support a finding of inadequate supervision based on the father's lost knife, and the evidence did not clearly establish that the father cut a child with a knife. Moreover, there was no indication that the father's hitting a child on the face or head with his hand was knowing and intentional or whether it occurred on more than one occasion. *Figueroa v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 83 (2013).

Family Services.

Juvenile court's order compelling department of human services to provide transportation benefits to family in the form of bus tokens and to provide family remainder of the full entitlement of preventive funds was permissible under this section. *Ark. Dep't of Human Servs. v. Clark*, 304 Ark. 403, 802 S.W.2d 461 (1991).

Findings of Fact.

This section requires specific findings of fact only where the court orders actual removal from a custodial parent. *Ark. Dep't of Human Servs. v. R.P.*, 333 Ark. 516, 970 S.W.2d 225 (1998).

In reversing an order granting custody of a minor child to a third party, the appellate court determined that the trial judge failed to make the written findings required by the statute, and that the evidence did not support the findings that were made in the order; there was no evidence as to the reason why it was necessary to remove the child from her mother's custody in order to protect her health and safety, there was no evidence of services or assistance offered to the

family, and the state saw no need to deprive the mother of the custody of her other infant daughter due to health and safety issues. *Robbins v. State*, 80 Ark. App. 204, 92 S.W.3d 707 (2002).

First Contact.

Where child was strangled by her father and removed from the home by her step-mother the next day, and the state agency investigation into the incident occurred shortly thereafter, the "first contact" requirement of subsection (b) (now (c)) of this section was satisfied because the investigation occurred as the result of an emergency situation. *Gullick v. Ark. Dep't of Human Servs.*, 326 Ark. 475, 931 S.W.2d 786 (1996).

Reasonable Efforts.

The findings required by former subsection (a) of this section are not to be viewed as mere formalities since Congress requires that, before a state may be eligible for federal matching funds, the removal of a child from the home must be the result of a judicial determination that reasonable efforts were made to prevent or eliminate the need for removal of the child; however, under subsection (b) (now (c)) of this section, the federal "reasonable efforts" requirement is deemed to have been met when the state agency's first contact with the family occurs during an emergency in which the juvenile could not safely remain at home. *Gullick v. Ark. Dep't of Human Servs.*, 326 Ark. 475, 931 S.W.2d 786 (1996).

Trial court was not required to make specific findings under this section because it was an emergency situation in which reasonable efforts were not required and the mother's parental rights to her other children were terminated. *Samuels v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 2, 479 S.W.3d 596 (2016).

Unfitness of Natural Parent.

Juvenile court committed error where it awarded custody of child to grandmother without determining that natural mother was an unfit parent. *Schuh v. Roberson*, 302 Ark. 305, 788 S.W.2d 740 (1990).

Cited: *Ark. Dep't of Human Servs. v. State*, 318 Ark. 294, 885 S.W.2d 14 (1994).

9-27-329. Disposition hearing.

(a) If the circuit court finds that the petition has been substantiated by the proof at the adjudication hearing, a disposition hearing shall be held for the court to enter orders consistent with the disposition alternatives.

(b) When a juvenile is held in detention after an adjudication hearing for delinquency pending a disposition hearing, the disposition hearing shall be held no more than fourteen (14) days following the adjudication hearing.

(c) In dependency-neglect proceedings, the disposition hearing may be held immediately following or concurrent with the adjudication hearing but in any event shall be held no more than fourteen (14) days following the adjudication hearing.

(d) In initially considering the disposition alternatives and at any subsequent hearing, the court shall give preference to the least restrictive disposition consistent with the best interests and welfare of the juvenile and the public.

(e) In dependency-neglect cases, a written disposition order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(f) At the disposition hearing, the court may admit into evidence any victim impact statements and studies or reports that have been ordered, even though they are not admissible at the adjudication hearing.

History. Acts 1989, No. 273, § 28; 1997, No. 1227, § 7; 1999, No. 401, § 8; 2001, No. 1503, § 8; 2003, No. 1809, § 5; 2009, No. 956, § 11; 2017, No. 701, § 3.

Amendments. The 2017 amendment,

in (d), inserted “initially” and “and at any subsequent hearing”.

Cross References. No reunification hearing, § 9-27-365.

CASE NOTES

ANALYSIS

Appellate Review.
Placement With Relatives.

Appellate Review.

Trial court's disposition findings were not final and appealable under Ark. Sup. Ct. & Ct. App. R. 6-9(a)(1)(B) where the order did not include an Ark. R. Civ. P. 54(b) certificate. *Walker v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 627, 534 S.W.3d 184 (2017).

Placement With Relatives.

Circuit court did not clearly err when it determined that terminating the mother's parental rights was in the child's best interest where no relatives had been ap-

proved for placement at the time of the termination hearing, and the mother's aunt and uncle declined the court's initial offer of an Interstate Compact on the Placement of Children home study and did not seek placement until the termination hearing; however, adoption of the child was premature due to the unresolved paternity issue. *Dominguez v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 2, 592 S.W.3d 723 (2020).

Even though adoption was not currently being pursued, termination of the mother's rights was in the two-year-old child's best interest because the child was in foster care, not the custody of the other parent; the child had been in foster care for all but the first two days of his life, and

it was only a possibility that he would ever be placed with the father, who had been incarcerated for most of the child's life but was no longer incarcerated; the mother had been incarcerated for the child's entire life and at the time of the termination hearing was not due to be released for three more years; and courts will not

enforce parental rights to the detriment of the well-being of the child. *Dean v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 286, 600 S.W.3d 136 (2020).

Cited: *Merritt v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 552, 473 S.W.3d 31 (2015).

9-27-330. Disposition — Delinquency — Alternatives.

(a) If a juvenile is found to be delinquent, the circuit court may enter an order making any of the following dispositions based upon the best interest of the juvenile:

(1)(A) Transfer legal custody of the juvenile to any licensed agency responsible for the care of delinquent juveniles or to a relative or other individual.

(B)(i) Commit the juvenile to the Division of Youth Services using the validated risk assessment system for Arkansas juvenile offenders selected by the Juvenile Judges Committee of the Arkansas Judicial Council with the division and distributed and administered by the Administrative Office of the Courts.

(ii)(a) The validated risk assessment system selected by the Juvenile Judges Committee of the Arkansas Judicial Council with the division shall be:

(1) The only validated risk assessment used by courts for commitment;

(2) Used throughout the state; and

(3) Applied to all commitment decisions for all juvenile offenders.

(b) The validated risk assessment may be changed to another validated risk assessment system by the Juvenile Judges Committee of the Arkansas Judicial Council with the division.

(iii)(a) In an order of commitment, the court may recommend that a juvenile be placed in a treatment program or community-based program instead of a youth services center and shall make specific findings in support of such a placement in the order.

(b) The court shall also specify in its recommendation whether it is requesting a division aftercare plan upon the juvenile's release from the division.

(c) A court may not commit a juvenile to the division if the juvenile is adjudicated delinquent of only a misdemeanor offense unless the:

(1) Juvenile is determined to be moderate risk or high risk by the validated risk assessment; and

(2) Court makes specific findings as to the factors considered for the disposition to be in the juvenile's best interest.

(d) A court may not commit a juvenile to the division if the juvenile is adjudicated delinquent of only a misdemeanor offense and the juvenile is determined to be low risk by the validated risk assessment.

(iv) A circuit court committing a juvenile to the division under subdivision (a)(1)(B)(iii) of this section shall make written findings

and consider the following factors in making its determination to commit the juvenile to the division:

(a) The previous history of the juvenile, including without limitation whether:

(1) The juvenile has been adjudicated delinquent and, if so, whether the offense was against a person or property; and

(2) Any other previous history of antisocial behavior or patterns of physical violence exist;

(b) Whether the circuit court has previously offered less restrictive programs or services to the juvenile and whether there are less restrictive programs or services available to the court that are likely to rehabilitate the juvenile before the expiration of the court's jurisdiction;

(c) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(d) Any other factors deemed relevant by the circuit court.

(v) Upon receipt of an order of commitment with recommendations for placement, the division shall consider the recommendations of the committing court in placing a juvenile in a youth services facility or a community-based program.

(vi) Upon receipt of an order of commitment, the division or its contracted provider or designee shall prepare a written treatment plan that:

(a) States the treatment plan for the juvenile, including the types of programs and services that will be provided to the juvenile;

(b) States the anticipated length of the juvenile's commitment;

(c)(1) States recommendations as to the most appropriate post-commitment placement for the juvenile.

(2) If the juvenile cannot return to the custody of his or her parent, guardian, or custodian because of child maltreatment, which includes the parent's, guardian's, or custodian's refusing to take responsibility for the juvenile, the division shall immediately contact the Office of Chief Counsel of the Department of Human Services.

(3) The Office of Chief Counsel of the Department of Human Services shall petition the committing court to determine the issue of custody of the juvenile;

(d) States any post-commitment community-based services that will be offered to the juvenile and to his or her family by the division or the community-based provider;

(e)(1) Outlines an aftercare plan, if recommended, including specific terms and conditions required of the juvenile and the community-based provider.

(2) If the juvenile progresses in treatment and an aftercare plan is no longer recommended or the terms of the aftercare plan need to be amended as a result of treatment changes, any change in the terms of the aftercare plan and conditions shall be provided in writing and shall be explained to the juvenile.

(3) The terms and conditions shall be provided also to the prosecuting attorney, the juvenile's attorney, and to the juvenile's legal

parent, guardian, or custodian by the division or its designee before the juvenile's release from the division.

(4) All aftercare terms shall be provided to the committing court; and

(f)(1) The treatment plan shall be filed with the committing court no later than thirty (30) days from the date of the commitment order or before the juvenile's release, whichever is sooner.

(2) A copy of the written treatment plan shall be provided and shall be explained to the juvenile.

(3) A copy shall be provided to the prosecutor, the juvenile's attorney, and to the juvenile's legal parent, guardian, or custodian and shall be filed in the court files of any circuit court where a dependency-neglect or family in need of services case concerning that juvenile is pending.

(C) This transfer of custody shall not include placement of adjudicated delinquents into the custody of the Department of Human Services for the purpose of foster care except as under the Child Maltreatment Act, § 12-18-101 et seq.;

(2) Order the juvenile or members of the juvenile's family to submit to physical, psychiatric, or psychological evaluations;

(3) Grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court and that no further services or periodic reviews are required;

(4)(A) Place the juvenile on probation under those conditions and limitations that the court may prescribe pursuant to § 9-27-339(a).

(B)(i) In addition, the court shall have the right as a term of probation to require the juvenile to attend school or make satisfactory progress toward attaining a high school equivalency diploma approved by the Adult Education Section.

(ii) The court shall have the right to revoke probation if the juvenile fails to regularly attend school or if satisfactory progress toward attaining a high school equivalency diploma approved by the Adult Education Section is not being made;

(5) Order a probation fee, not to exceed twenty dollars (\$20.00) per month, as provided in § 16-13-326(a);

(6) Assess a court cost of no more than thirty-five dollars (\$35.00) to be paid by the juvenile, his or her parent, both parents, or his or her guardian;

(7)(A) Order restitution to be paid by the juvenile, a parent, both parents, the guardian, or his or her custodian.

(B) If the custodian is the State of Arkansas, both liability and the amount that may be assessed shall be determined by the Arkansas State Claims Commission;

(8) Order a fine of not more than five hundred dollars (\$500) to be paid by the juvenile, a parent, both parents, or the guardian;

(9) Order that the juvenile and his or her parent, both parents, or the guardian perform court-approved volunteer service in the community

designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile, not to exceed one hundred sixty (160) hours;

(10)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-approved parental responsibility training program if available.

(B) The court may make reasonable orders requiring proof of completion of the training program within a certain time period and payment of a fee covering the cost of the training program.

(C) The court may provide that any violation of such orders shall subject the parent, both parents, or the guardian to the contempt sanctions of the court;

(11)(A)(i) Order that the juvenile remain in a juvenile detention facility for an indeterminate period not to exceed ninety (90) days.

(ii) The court may further order that the juvenile be eligible for work release or to attend school or other educational or vocational training.

(B) The juvenile detention facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents;

(12) Place the juvenile on residential detention with electronic monitoring, either in the juvenile's home or in another facility as ordered by the court;

(13)(A) Order the parent, both parents, or the guardian of any juvenile adjudicated delinquent and committed to a youth services center, detained in a juvenile detention facility, or placed on electronic monitoring to be liable for the cost of the commitment, detention, or electronic monitoring.

(B)(i) The court shall take into account the financial ability of the parent, both parents, or the guardian to pay for the commitment, detention, or electronic monitoring.

(ii) The court shall take into account the past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct.

(iii) If the parent is a noncustodial parent, the court shall take into account the opportunity the parent has had to correct the delinquent juvenile's conduct.

(iv) The court shall take into account any other factors the court deems relevant;

(14) When a juvenile is committed to a youth services center or detained in a juvenile detention facility and the juvenile is covered by private health insurance, order the parent or guardian to provide information on the juvenile's health insurance coverage, including a copy of the health insurance policy and the pharmacy card when available, to the juvenile detention center or youth services center that has physical custody of the juvenile; or

(15)(A) Order the Department of Finance and Administration to suspend the driving privileges of any juvenile adjudicated delinquent.

(B) The order shall be prepared and transmitted to the Department of Finance and Administration within twenty-four (24) hours after the juvenile has been found delinquent and is sentenced to have his or her driving privileges suspended.

(C) The court may provide in the order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school or for other circumstances.

(b) The court shall specifically retain jurisdiction to amend or modify any orders entered pursuant to this section.

(c)(1) If a juvenile is adjudicated delinquent for possession of a handgun, as provided in § 5-73-119, or criminal use of prohibited weapons, as provided in § 5-73-104, or possession of a defaced firearm, as provided in § 5-73-107, then the court shall commit the juvenile:

(A) To a juvenile detention facility, as provided in subdivision (a)(11) of this section;

(B) To a youth services center operated by the Department of Human Services State Institutional System Board, as provided in subdivision (a)(1) of this section; or

(C) Place the juvenile on residential detention, as provided in subdivision (a)(12) of this section.

(2) The court may take into consideration any preadjudication detention period served by the juvenile and sentence the juvenile to time served.

(d)(1) When the court orders restitution pursuant to subdivision (a)(7) of this section, the court shall consider the following:

(A) The amount of restitution may be decided:

(i) If the juvenile is to be responsible for the restitution, by agreement between the juvenile and the victim;

(ii) If the parent or parents are to be responsible for the restitution, by agreement between the parent or parents and the victim;

(iii) If the juvenile and the parent or parents are to be responsible for the restitution, by agreement between the juvenile, his or her parent or parents, and the victim; or

(iv) At a hearing at which the state must prove the restitution amount by a preponderance of the evidence;

(B) Restitution shall be made immediately unless the court determines that the parties should be given a specified time to pay or should be allowed to pay in specified installments; and

(C)(i) In determining if restitution should be paid and by whom, as well as the method and amount of payment, the court shall take into account:

(a) The financial resources of the juvenile, his or her parent, both parents, or the guardian and the burden the payment will impose with regard to the other obligations of the paying party;

(b) The ability to pay restitution on an installment basis or on other conditions to be fixed by the court;

(c) The rehabilitative effect of the payment of restitution and the method of payment; and

(d) The past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct.

(ii)(a) The court shall take into account whether the parent is a noncustodial parent.

(b) The court may take into consideration the opportunity the parent has had to correct the delinquent juvenile's conduct.

(iii) The court shall take into account any other factors the court deems relevant.

(2) If the juvenile is placed on probation, any restitution ordered under this section may be a condition of the probation.

(e) When an order of restitution is entered, it may be collected by any means authorized for the enforcement of money judgments in civil actions, and it shall constitute a lien on the real and personal property of the persons and entities the order of restitution is directed upon in the same manner and to the same extent as a money judgment in a civil action.

(f)(1) The judgment entered by the court may be in favor of the state, the victim, or any other appropriate beneficiary.

(2) The judgment may be discharged by a settlement between the parties ordered to pay restitution and the beneficiaries of the judgment.

(g) The court shall determine priority among multiple beneficiaries on the basis of the seriousness of the harm each suffered, their other resources, and other equitable factors.

(h) If more than one (1) juvenile is adjudicated delinquent of an offense for which there is a judgment under this section, the juveniles are jointly and severally liable for the judgment, unless the court determines otherwise.

(i)(1) A judgment under this section does not bar a remedy available in a civil action under other law.

(2) A payment under this section must be credited against a money judgment obtained by the beneficiary of the payment in a civil action.

(3) A determination under this section and the fact that payment was or was not ordered or made are not admissible in evidence in a civil action and do not affect the merits of the civil action.

(j) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter the following dispositions:

(1) Order any of the juvenile delinquency dispositions authorized by this section; and

(2) Suspend the imposition of an adult sentence pending court review.

History. Acts 1989, No. 273, § 29; 1991, No. 763, § 1; 1993, No. 1227, § 4; 1994 (2nd Ex. Sess.), No. 61, § 1; 1994 (2nd Ex. Sess.), No. 62, § 1; 1995, No. 533, § 9; 1995, No. 779, § 1; 1995, No. 798, § 1; 1995, No. 1261, § 14; 1995, No. 1335, § 1; 1995, No. 1337, § 5; 1997, No. 1118, § 3; 1999, No. 1192, § 19; 1999, No. 1340, §§ 15, 16; 2003, No. 1166, § 16; 2003, No.

1319, § 17; 2003, No. 1809, § 6; 2005, No. 1990, § 9; 2007, No. 587, § 16; 2009, No. 758, § 14; 2009, No. 956, § 12; 2015, No. 1115, § 22; 2019, No. 189, § 4; 2019, No. 910, § 2194.

A.C.R.C. Notes. Acts 2019, No. 189, § 1, provided: "This act shall be known and may be cited as the 'Restoring Arkansas Families Act'."

Acts 2019, No. 189, § 2, provided: “Legislative findings and intent.

“(a) The General Assembly finds:

“(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

“(2) Stakeholder groups represented on the board include:

“(A) Families and youth involved in the juvenile system;

“(B) The Department of Education;

“(C) The Department of Workforce Services;

“(D) The Department of Human Services;

“(E) Youth services providers;

“(F) Juvenile judges;

“(G) The Administrative Office of the Courts;

“(H) Prosecuting attorneys;

“(I) Public defenders;

“(J) Youth advocates; and

“(K) Experts in adolescent development; and

“(3) In 2017, the board worked with the Arkansas Supreme Court Commission on Children, Youth, and Families to identify concerns and priorities for legislative action.

“(b) The purpose of this act is to:

“(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

“(2) Reduce the number of secure out-of-home placements;

“(3) Redirect funding from secure residential facilities to evidence-based community services;

“(4) Equitably allocate services in and across each judicial district;

“(5) Enhance treatment for youth committed to the Division of Youth Services; and

“(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers.”

Amendments. The 2015 amendment substituted “high school equivalency diploma approved by the Department of Career Education” for “general educational development certificate” in (a)(4)(B)(i) and (ii).

The 2019 amendment by No. 189, in (a)(1)(B)(i), deleted “of the Department of Human Services” following “Division of Youth Services”, inserted “validated”, and inserted “selected by the Juvenile Judges Committee of the Arkansas Judicial Council with the division and”; inserted (a)(1)(B)(ii)(a) and redesignated former (a)(1)(B)(ii) as (a)(1)(B)(ii)(b); in (a)(1)(B)(ii)(b), inserted the first occurrence of “validated”, and substituted “changed to another validated risk assessment system” for “modified”; inserted (a)(1)(B)(iii)(c) through (a)(1)(B)(iv) and redesignated former (a)(1)(B)(iv) and (a)(1)(B)(v) as (a)(1)(B)(v) and (a)(1)(B)(vi).

The 2019 amendment by No. 910 substituted “Adult Education Section of the Division of Workforce Services” for “Department of Career Education” in (a)(4)(B)(i) and (ii).

Cross References. Graduated community-based sanctions for delinquent juveniles, § 9-28-701 et seq.

Mandated release of personal information concerning certain juvenile escapees, § 9-28-215.

Reimbursement for educational services provided in juvenile detention facilities, § 6-20-104.

Risk and needs assessments, § 9-27-368.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Procedural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

CASE NOTES

ANALYSIS

Commitment.
Department of Human Services.
Probation Fee.
Protective Supervision.
Restitution.
Trial Court's Authority.

Commitment.

Chancellor lacked authority to order commitment of a juvenile offender to a serious offender program within the youth services center. Ark. Dep't of Human Servs. v. State, 319 Ark. 749, 894 S.W.2d 592 (1995).

Juvenile court properly revoked a juvenile's probation and committed him to the Department of Human Services, Division of Youth Services (DYS) because he did not challenge the evidence that he failed to obey the condition that he refrain from using alcohol, he cited no authority to support his contention that his disposition was unwarranted, and the juvenile court was statutorily authorized, upon finding the juvenile to be delinquent, to commit him to DHS upon revoking his probation. C.C. v. State, 2014 Ark. App. 262 (2014).

Department of Human Services.

Department of Human Services is a custodian for purposes of this section and § 9-27-331. Ark. Dep't of Human Servs. v. State, 312 Ark. 481, 850 S.W.2d 847 (1993).

Although no one has filed a lawsuit against the Department of Human Services seeking costs and restitution, but the court has imposed, under statutory authority, costs and restitutionary awards against the state agency in connection with delinquency proceedings in which the agency acted as a custodian of a juvenile, because the State will no doubt be coerced to bear the financial obligation to pay costs and restitution if the orders are upheld, the suit is one against the State for the purpose of determining whether sovereign immunity applies. Ark. Dep't of Human Servs. v. State, 312 Ark. 481, 850 S.W.2d 847 (1993).

The appearance of the Department of Human Services (DHS) subsequent to complaints being filed against juveniles, pursuant to DHS's obligation to obtain

custody of the juveniles in dependency-neglect proceedings and appear in delinquency proceedings, is not a voluntary waiver of sovereign immunity, because DHS is under an obligation to appear. Ark. Dep't of Human Servs. v. State, 312 Ark. 481, 850 S.W.2d 847 (1993).

Denial of motion to intervene by the Department of Human Services in a juvenile delinquency case was affirmed; the department could appeal from the order denying its motion to set aside the commitment order without needing to intervene in the underlying matter. Ark. Dep't of Human Servs. v. State, 2017 Ark. App. 137, 516 S.W.3d 743 (2017).

Probation Fee.

The trial court cannot assess a probation fee against a custodian under this section or § 9-27-331, since this section does not authorize the assessment of a probation fee against a custodian, and a juvenile court's authority to assess a probation fee is based upon § 16-13-326(a), which is silent on assessing a probation fee against a custodian. Ark. Dep't of Human Servs. v. State, 312 Ark. 481, 850 S.W.2d 847 (1993).

Protective Supervision.

Under factual allegations of petition, there was no basis for construing the term "protective supervision" in former statute as requiring only the administration of a state agency. Woodruff v. Shockey, 297 Ark. 595, 764 S.W.2d 431 (1989) (decision under prior law).

Restitution.

Trial court did not err when it ordered defendant juvenile to pay restitution because it was not necessary for defendant to be adjudicated for any offense other than theft by receiving to impose restitution. J.L. v. State, 2018 Ark. App. 629, 567 S.W.3d 80 (2018).

Trial Court's Authority.

Trial court's order did not violate § 9-28-207 as it did not dictate placement but stated only that if the juvenile was going to be in the Department of Human Services' custody, he had to receive treatment. Ark. Dep't of Human Servs. v. State, 2017 Ark. App. 137, 516 S.W.3d 743 (2017).

Cited: *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993); *Allstate Ins. Co. v. Burrough*, 120 F.3d 834 (8th Cir. 1997); *B.J. v. State*, 56 Ark. App. 35, 937 S.W.2d 675 (1997); *McGill v. State*, 60 Ark. App. 246, 962 S.W.2d 382 (1998); *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

9-27-331. Disposition — Delinquency — Limitations.

(a)(1) A commitment to the Division of Youth Services is for an indeterminate period not to exceed the juvenile's twenty-first birthday, except as otherwise provided by law.

(2) An order of commitment shall remain in effect for an indeterminate period not exceeding two (2) years from the date entered.

(3) Before the expiration of an order of commitment, the circuit court may extend the order for additional periods of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(4) The committing court may at any time recommend that a juvenile be released from the custody of the division by making a written request for release stating the reasons release is in the best interests of the juvenile and society.

(5) The length of stay and the final decision to release shall be the exclusive responsibility of the division, except when the juvenile is an extended juvenile jurisdiction offender.

(b)(1)(A) Subsection (a) of this section does not apply to extended juvenile jurisdiction offenders.

(B) The circuit court shall have sole release authority when an extended juvenile jurisdiction offender is committed to the division.

(2)(A) Upon a determination that the juvenile has been rehabilitated, the division may petition the court for release.

(B) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

(i) The experience and character of the juvenile before and after the juvenile's disposition, including compliance with the court's orders;

(ii) The nature of the offense or offenses and the manner in which they were committed;

(iii) The recommendations of the professionals who have worked with the juvenile;

(iv) The protection of public safety; and

(v) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(3) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

(c)(1) Unless otherwise stated, and excluding extended juvenile jurisdiction offenders, an order of probation shall remain in effect for an indeterminate period not exceeding two (2) years.

(2) A juvenile shall be released from probation upon:

(A) Expiration of the order; or

(B) A finding by the court that the purpose of the order has been achieved.

(3) Prior to the expiration of an order of probation, the court may extend the order for an additional period of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(d)(1)(A) The court may enter an order for physical, psychiatric, or psychological evaluation or counseling or treatment affecting the family of a juvenile only after finding that the evaluation, counseling, or treatment of family members is necessary for the treatment or rehabilitation of the juvenile.

(B) Subdivision (d)(1)(A) of this section shall not apply to the parental responsibility training programs in § 9-27-330(a)(10).

(2) For purposes of this section, if the Department of Human Services will be the payor, excluding the community-based providers, the court shall not specify a particular provider for family services.

(e)(1) An order of restitution, not to exceed ten thousand dollars (\$10,000) per victim, to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian may be entered only after proof by a preponderance of the evidence that specific damages were caused by the juvenile and that the juvenile's actions were the proximate cause of the damage.

(2)(A) If the amount of restitution determined by the court exceeds ten thousand dollars (\$10,000) for any individual victim, the court shall enter a restitution order for ten thousand dollars (\$10,000) in favor of the victim.

(B) Nothing in this section shall prevent a person or entity from seeking recovery for damages in excess of ten thousand dollars (\$10,000) available under other law.

(f) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(g)(1) If the juvenile who has been adjudicated delinquent is also in the custody of the department pursuant to a family in need of services or dependency-neglect petition and the court does not commit the juvenile to the division or order the juvenile to detention, the Civilian Student Training Program, or a facility exclusively for delinquents, then any issues regarding placement of the juvenile shall be addressed only in the family in need of services or dependency-neglect case and shall not be an issue addressed, nor shall any orders be entered in the delinquency case regarding placement of the juvenile.

(2) Within ten (10) days of the entry of any order in the delinquency case, the prosecuting attorney shall file a copy of the order in the juvenile's dependency-neglect case.

(h) Custody of a juvenile shall not be transferred to the department if a delinquency petition or case is converted to a family in need of services petition or case.

(i) No court may commit to the division a juvenile found solely in criminal contempt.

History. Acts 1989, No. 273, § 30; 1991, No. 763, § 2; 1994 (2nd Ex. Sess.), No. 61, § 2; 1994 (2nd Ex. Sess.), No. 62, § 2; 1995, No. 779, § 2; 1995, No. 1261, § 15; 1999, No. 1192, § 20; 1999, No. 1340, §§ 17-19; 2003, No. 1166, § 17;

2003, No. 1319, § 18; 2003, No. 1473, § 17; 2003, No. 1809, §§ 7, 8; 2005, No. 1990, §§ 10, 11; 2009, No. 956, § 13.

Cross References. Graduated community-based sanctions for delinquent juveniles, § 9-28-701 et seq.

CASE NOTES

ANALYSIS

Constitutionality.

Purpose.

Commitment to Youth Services.

Continuing Jurisdiction.

Probation Fee.

Constitutionality.

Application to juvenile of the 1994 amendment of subsection (d) (now (e)) of this section, increasing the burden of the punishment imposed on juveniles from \$2,000 to \$10,000, constituted a violation of the ex post facto clause where amendment became effective subsequent to juvenile's offense. *Eichelberger v. State*, 323 Ark. 551, 916 S.W.2d 109 (1996).

Purpose.

If the legislature had intended the ceiling to apply to a multiplicity of crimes it would have referred to "losses," rather than "the loss." *Leach v. State*, 307 Ark. 201, 819 S.W.2d 1 (1991).

Commitment to Youth Services.

Where defendant was 16 at the time the offense was committed, but would have reached the age of 18 by the time he was convicted, he could not then have been committed to a youth services center on conviction, and therefore a transfer of his case to juvenile court was unwarranted. *Sims v. State*, 320 Ark. 528, 900 S.W.2d 508 (1995), overruled, *MacKintrush v. State*, 334 Ark. 390, 978 S.W.2d 293 (1998).

Continuing Jurisdiction.

Defendant juvenile, relying on § 5-4-307, asserted that the trial court lacked jurisdiction to revoke his suspended sentence where the revocation petition was filed and heard outside the period of suspension, however, defendant's reliance on criminal code provisions was misplaced because subdivision (c)(1) of this section provided that an order of probation would remain in effect for an indeterminate period not to exceed two years, defendant had not been released from probation, and the trial court had jurisdiction to revoke defendant's probation pursuant to § 9-27-339. *Byrd v. State*, 84 Ark. App. 203, 138 S.W.3d 109 (2003).

Probation Fee.

The trial court cannot assess a probation fee against a custodian under § 9-27-330 or this section, since § 9-27-330 does not authorize the assessment of a probation fee, and a juvenile court's authority to assess a probation fee is based on § 16-13-326(a), which is silent on assessing a probation fee against a custodian. *Ark. Dep't of Human Servs. v. State*, 312 Ark. 481, 850 S.W.2d 847 (1993).

Cited: *Bright v. State*, 307 Ark. 250, 819 S.W.2d 7 (1991); *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992); *Myers v. State*, 317 Ark. 70, 876 S.W.2d 246 (1994); *Brooks v. State*, 326 Ark. 201, 929 S.W.2d 160 (1996); *Jensen v. State*, 328 Ark. 349, 944 S.W.2d 820 (1997); *Majesty v. State*, 330 Ark. 416, 954 S.W.2d 245 (1997).

9-27-332. Disposition — Family in need of services — Generally.

(a) If a family is found to be in need of services, the circuit court may enter an order making any of the following dispositions:

(1)(A) To order family services to rehabilitate the juvenile and his or her family.

(B)(i) If the Department of Human Services is the provider for family services, the family services shall be limited to those services available by the department's community-based providers or contractors, excluding the contractors with the Division of Children and Family Services and services of the department for which the family applies and is determined eligible.

(ii) To prevent removal when the department is the provider for family services, the court shall make written findings outlining how each service is intended to prevent removal;

(2)(A) If it is in the best interest of the juvenile, transfer custody of juvenile family members to another licensed agency responsible for the care of juveniles or to a relative or other individual.

(B) If it is in the best interest of the juvenile and because of acts or omissions by the parent, guardian, or custodian, removal is necessary to protect the juvenile's health and safety, transfer custody to the department.

(C) A juvenile in the custody of the department is "awaiting foster care placement", as that term is used in the definition of "homeless children and youths" in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11434a(2), if the juvenile:

(i) Is placed in a shelter, facility, or other short-term placement with a plan of moving the juvenile within ninety (90) days;

(ii) Is transferred to an emergency placement to protect the juvenile's health or welfare;

(iii) Is placed in a provisional foster home as defined by § 9-28-402;

(iv) Has experienced three (3) or more placements within a twelve-month period; or

(v) Is placed in a regular foster home or other placement that is not directly related to the permanency goal identified in the case plan required under § 9-28-111;

(3)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-ordered parental responsibility training program, if available.

(B) The court may make reasonable orders requiring proof of completion of such a training program within a certain time period and payment of a fee covering the cost of the training program;

(4) Place the juvenile on residential detention with electronic monitoring in the juvenile's home;

(5) Order the juvenile, his or her parent, both parents, or guardian to perform court-approved volunteer service in the community designed to contribute to the rehabilitation of the juvenile or the ability of the

parent or guardian to provide proper parental care and supervision of the juvenile, not to exceed one hundred sixty (160) hours;

(6)(A) Place the juvenile on supervision terms, including without limitation requiring the juvenile to attend school or make satisfactory progress toward attaining a high school equivalency diploma approved by the Adult Education Section, requiring the juvenile to observe a curfew, and prohibiting the juvenile from possessing or using any alcohol or illegal drugs.

(B) The supervision terms shall be in writing.

(C) The supervision terms shall be given to the juvenile and explained to the juvenile and to his or her parent, guardian, or custodian by the juvenile intake or probation officer in a conference immediately following the disposition hearing;

(7)(A) Order a fine not to exceed five hundred dollars (\$500) to be paid by the juvenile, a parent, both parents, a guardian, or a custodian when the juvenile exceeds the number of excessive unexcused absences provided in the student attendance policy of the district or the Career Education and Workforce Development Board.

(B) The purpose of the penalty set forth in this section is to impress upon the parents, guardians, or persons in loco parentis the importance of school or adult education attendance, and the penalty is not to be used primarily as a source of revenue.

(C)(i) In all cases in which a fine is ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay for the fine.

(ii) In making its determination, the court shall consider the following factors:

(a) The financial ability of the parent, both parents, the guardian, or the custodian to pay for such services;

(b) The past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and

(c) Any other factors that the court deems relevant.

(D) When practicable and appropriate, the court may utilize mandatory attendance to such programs as well as community service requirements in lieu of a fine;

(8) Assess a court cost of no more than thirty-five dollars (\$35.00) to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian; and

(9) Order a juvenile service fee not to exceed twenty dollars (\$20.00) a month to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian.

(b) The court may provide that any violation of its orders shall subject the parent, both parents, the juvenile, custodian, or guardian to contempt sanctions.

History. Acts 1989, No. 273, § 31; 1995, No. 1335, § 2; 1995, No. 1337, § 6; 1995, No. 533, § 10; 1995, No. 779, § 3; 1997, No. 1118, § 4; 1999, No. 401, § 9;

1999, No. 1340, § 20; 2001, No. 1503, § 9; 2003, No. 1319, §§ 19, 20; 2003, No. 1809, § 9; 2005, No. 1990, § 12; 2007, No. 587, § 17; 2015, No. 1094, § 5; 2015, No. 1115, § 23; 2019, No. 910, § 2195.

Amendments. The 2015 amendment by No. 1094 rewrote (a)(2)(C).

The 2015 amendment by No. 1115 substituted “high school equivalency diploma

approved by the Department of Career Education” for “general education development certificate” in (a)(6)(A).

The 2019 amendment substituted “Adult Education Section of the Division of Workforce Services” for “Department of Career Education” in (a)(6)(A).

CASE NOTES

ANALYSIS

School Uniforms.
Written Findings.

School Uniforms.

Order for the Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager’s health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make written findings necessitated reversal, and the trial court’s personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and ma-

ternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. *Ark. Dep’t of Human Servs. v. A.M.*, 2012 Ark. App. 240, 423 S.W.3d 86 (2012) (decided under former version of § 9-27-313(a)(1)(C)).

Written Findings.

Circuit court clearly erred in finding that services were necessary to prevent the child’s removal; no evidence was presented to support that finding, nor did the circuit court provide the required written findings. *Ark. Dep’t of Human Servs. v. White*, 2014 Ark. App. 193 (2014) (decided under former version of § 9-27-313(a)(1)(C)).

Cited: *Johnson v. State*, 319 Ark. 3, 888 S.W.2d 661 (1994).

9-27-333. Disposition — Family in need of services — Limitations — Definitions.

(a) At least five (5) working days before ordering the Department of Human Services, excluding community-based providers, to provide or pay for family services, the circuit court shall fax a written notice of intent to the Secretary of the Department of Human Services and to the attorney of the local Office of Chief Counsel of the Department of Human Services.

(b) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(c) Failure to provide at least five (5) working days’ notice to the department renders any part of the order pertaining to the department void.

(d)(1) For purposes of this section, the court shall not specify a particular provider for placement or family services when the department is the payor or provider.

(2)(A) The court may order a child to remain in a placement if the court finds the placement is in the best interest of the child after hearing evidence from all parties.

(B) A court may also order a child to be placed into a licensed or approved placement after a hearing where the court makes a finding that it is in the best interest of the child based on bona fide consideration of evidence and recommendations from all the parties.

(e)(1) In all cases in which family services are ordered, the court shall determine a parent's, guardian's, or custodian's ability to pay, in whole or in part, for these services.

(2) This determination and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or in part, for the services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian can pay for the family services ordered and ordering the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(4) For purposes of this subsection:

(A) "Parent, guardian, and custodian" means the individual or individuals from whom custody was removed; and

(B) "Periodically" means no more than one (1) time per month.

(5) In making its determination, the court shall consider the following factors:

(A) The financial ability of the parent, both parents, the guardian, or the custodian to pay for the services;

(B) The past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and

(C) Any other factors the court deems relevant.

(f) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed social worker who is approved to do home studies and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(g) Custody of a juvenile shall not be transferred to the department if a delinquency petition or case is converted to a family in need of services petition or case.

(h) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services.

(i) For purposes of this section, the court shall not order the department to expend or forward Social Security benefits for which the department is payee.

History. Acts 1989, No. 273, § 32; 1997, No. 1227, § 9; 2003, No. 1319, § 27; 2003, No. 1809, § 10; 2005, No. 1990, §§ 13, 14; 2007, No. 587, § 18; 2009, No. 956, § 14; 2011, No. 1175, § 6; 2019, No. 910, § 5132.

Amendments. The 2019 amendment substituted "Secretary of the Department

of Human Services” for “Director of the Department of Human Services” in (a).

CASE NOTES

Cited: Ark. Dep’t of Human Servs. v. A.M., 2012 Ark. App. 240, 423 S.W.3d 86 (2012).

9-27-334. Disposition — Dependent-neglected — Generally.

(a) If a juvenile is found to be dependent-neglected, the circuit court may enter an order making any of the following dispositions:

(1) Order family services;

(2)(A) If it is in the best interest of the juvenile, transfer custody of the juvenile to the Department of Human Services, to another licensed agency responsible for the care of juveniles, or to a relative or other individual.

(B) If the court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility, or an exempt child welfare agency as defined at § 9-28-402.

(C) A juvenile in the custody of the department is “awaiting foster care placement”, as that term is used in the definition of “homeless children and youths” in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11434a(2), if the juvenile:

(i) Is placed in a shelter, facility, or other short-term placement with a plan of moving the juvenile within ninety (90) days;

(ii) Is transferred to an emergency placement to protect the juvenile’s health or welfare;

(iii) Is placed in a provisional foster home as defined by § 9-28-402;

(iv) Has experienced three (3) or more placements within a twelve-month period; or

(v) Is placed in a regular foster home or other placement that is not directly related to the permanency goal identified in the case plan required under § 9-28-111;

(3)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-ordered parental responsibility training program, if available, and participate in a juvenile drug court program.

(B) The court may make reasonable orders requiring proof of completion of such a training program within a certain time period and payment of a fee covering the cost of the training program; and

(4) Determine the most appropriate goal of the case.

(b) Such an order of custody shall supersede an existing court order of custody and shall remain in full force and effect until a subsequent order of custody is entered by a court of competent jurisdiction.

(c) The court may provide that any violation of its orders shall subject any party in violation to contempt sanctions.

History. Acts 1989, No. 273, § 33; 1993, No. 1227, § 2; 1995, No. 533, § 11; 1995, No. 779, § 4; 1995, No. 1335, § 3; 1995, No. 1337, § 7; 1999, No. 401, § 10; 1999, No. 1340, § 21; 2001, No. 1503, § 10; 2003, No. 1319, § 21; 2003, No. 1809, § 11; 2005, No. 1990, § 15; 2007, No. 587, § 19; 2007, No. 1022, § 2; 2015, No. 825, §§ 2, 3; 2015, No. 1094, § 6.

Amendments. The 2015 amendment by No. 825 added (a)(4); and substituted “any party in violation” for “the parent, both parents, the juvenile, the custodian, or the guardian” in (c).

The 2015 amendment by No. 1094 rewrote (a)(2)(C).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Civil Rights, 11 U. Ark. Little Rock L.J. 149.

CASE NOTES

ANALYSIS

Adoption Subsidies.
Attorney’s Fees.
Change of Custody.
Jurisdiction to Award Custody.

Adoption Subsidies.

Administrative law judge erred in finding that children were not in the state’s custody for adoption subsidy purposes because, although the children were in their aunt’s physical custody, the state maintained a supervisory role over the children through the context of the protective-services case that remained open on the children until their parents’ rights were terminated. *Batiste v. Ark. Dep’t of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

Attorney’s Fees.

Order requiring the Department of Health and Human Services to pay for an attorney for a child in its custody who had been accused of sexual misconduct was upheld pursuant to subdivision (a)(1) of this section; providing the child with an attorney, in order to keep the child off the sex offender list, would greatly assist in the child’s adoption. *Ark. Dep’t of Health & Human Servs. v. C.M.*, 100 Ark. App. 414, 269 S.W.3d 387 (2007).

Change of Custody.

Court properly changed child custody pursuant to this section because establishment of a regular routine and rules was important for the child because the child had a substantial mood instability

and had been adversely affected by the chaos in the mother’s home, and the father was a good neighbor, kind-hearted, and passionate about the father’s family. *Keckler v. Ark. Dep’t of Human Servs.*, 2011 Ark. App. 375, 383 S.W.3d 912 (2011).

Trial court did not err in awarding permanent custody of a mother’s children to their respective fathers because it was in the best interest of the children; the mother’s testimony revealed that neither of her teenage children attended school regularly in her care. One father had obtained much-needed dental work for his twins, had seen to their other medical needs, and both had begun wearing glasses. *Thomas v. Ark. Dep’t of Human Servs.*, 2012 Ark. App. 309, 419 S.W.3d 734 (2012).

Trial court’s finding that it was in the child’s best interest to be placed in the permanent custody of her father was not clearly erroneous, even though the father was awarded custody only seven months after the child was removed from her mother and the mother had made some improvements during the course of the case, where the trial court considered evidence that the child was flourishing in her new environment and had unequivocally expressed her desire to live with her father. The evidence also showed that the mother had only recently obtained relatively stable housing, she worked part-time, and still had pending drug charges. *Metcalf v. Ark. Dep’t of Human Servs.*, 2015 Ark. App. 402, 466 S.W.3d 426 (2015).

Where mother contended that the circuit court failed to conduct a hearing or

take evidence regarding the permanent-custody placement and that the record was void of evidence to support the circuit court's placement, the circuit court's order granting permanent custody of the mother's three children to family members was affirmed because the mother failed to bring a sufficient record demonstrating error. *Ponder v. Ark. Dep't of Human Servs.*, 2016 Ark. 261, 494 S.W.3d 426 (2016).

While mother's assertions were correct that the trial court incorrectly applied the material change of circumstances standard applicable in domestic relations proceedings to determine change of custody in the dependency-neglect action, the case would not be reversed on that basis as the mother did not object below and in fact invited the error. *Clark v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 286, 493 S.W.3d 782 (2016).

Reversal and remand was appropriate when a trial court transferred custody from one parent to the other parent in a dependency-neglect action; the appellate court was left with a definite and firm conviction that a mistake was committed when the trial court found that it was in the child's best interest to be placed in the permanent custody of the other parent without fully considering the effect such a transfer would have on the child. *Clark v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 286, 493 S.W.3d 782 (2016).

Award of permanent custody of a mother's children to their father (the mother's ex-husband), subject to reasonable visitation by the mother, was appropriate; the children's counselor testified it was more stable for the children because the mother's then husband had brandished a gun and threatened to kill himself and the children had suffered great anxiety while in the mother's custody due to the husband's actions. The children also were stable and doing well in school in the father's custody. *Brown v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 354, 552 S.W.3d 457 (2018).

Jurisdiction to Award Custody.

From the language in this section it is clear that the juvenile court had the power to award custody of a child to the noncustodial parent once the Department of Human Services initiated dependency-neglect proceedings; in 1993, the General Assembly made it clear that a juvenile court's custody order supersedes any existing court order and remains in effect until a subsequent custody order is entered by a court of competent jurisdiction. *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

Cited: *Woodruff v. Shockey*, 297 Ark. 595, 764 S.W.2d 431 (1989); *Ark. Dep't of Human Servs. v. Denmon*, 2009 Ark. 485, 346 S.W.3d 283 (2009); *Hays v. Ark. Dep't of Health & Human Servs.*, 2009 Ark. App. 864, 372 S.W.3d 830 (2009).

9-27-335. Disposition — Dependent-neglected — Limitations.

(a)(1) At least five (5) working days before ordering the Department of Human Services, excluding community-based providers, to provide or pay for family services in any case in which the department is not a party, the circuit court shall fax a written notice of intent to the Secretary of the Department of Human Services and to the attorney of the local Office of Chief Counsel of the Department of Human Services.

(2) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(3) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

(b)(1) For purposes of this section, the court shall not specify a particular provider for placement or family services if the department is the payor or provider.

(2)(A) The court may order a child to be placed or to remain in a placement if the court finds the placement is in the best interest of the child after hearing evidence from all parties.

(B) A court may also order a child into a licensed or approved placement after a hearing where the court makes a finding that it is in the best interest of the child based on bona fide consideration of evidence and recommendations from all the parties.

(C) The court shall not order a child to be placed or remain in a placement in a foster home that has been closed or suspended by a child placement agency.

(D)(i) If the health or welfare of a child is in immediate danger while in a court-ordered placement, the department may immediately remove the child from the court-ordered placement.

(ii) The department shall notify all parties within twenty-four (24) hours of the change in placement under subdivision (b)(2)(D)(i) of this section.

(iii) A party may request a hearing on the change in placement made under subdivision (b)(2)(D)(ii) of this section, and the hearing shall be held within five (5) business days of receiving the request.

(c)(1) In all cases in which family services are ordered, the court shall determine the ability of the parent, guardian, or custodian to pay, in whole or in part, for these services.

(2) The determination of ability to pay and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or in part, for the services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian is able to pay for the family services ordered and order the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(d) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or by a licensed social worker who is approved to do home studies and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(e)(1)(A) The court shall enter an order transferring custody of a juvenile in a dependency-neglect case only after determining that reasonable efforts have been made by the department to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.

(B) The juvenile's health and safety shall be the paramount concern of the court in determining if the department could have made reasonable efforts to prevent the juvenile's removal.

(2) If the court finds that reasonable efforts to deliver family services could have been made with the juvenile safely remaining at home but were not made, the court may:

(A) Dismiss the petition;

(B) Order family services reasonably calculated to prevent the need for out-of-home placement; or

(C) Transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement if the transfer is necessary:

(i) To protect the juvenile's health and safety; or

(ii) To prevent the removal of the juvenile from the jurisdiction of the court.

(f) In a case of medical neglect involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

(1) Preventing or remedying serious harm to the child; or

(2) Preventing the withholding of medically indicated treatment from a child with a life-threatening condition.

(g) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services.

(h) For purposes of this section, the court shall not order the department to expend or forward Social Security benefits for which the department is payee.

History. Acts 1989, No. 273, § 34; 1997, No. 1227, § 10; 1999, No. 401, § 11; 1999, No. 1363, § 2; 2003, No. 1319, § 28; 2003, No. 1809, § 12; 2005, No. 1990, § 16; 2009, No. 956, §§ 15, 16; 2011, No. 1175, § 7; 2013, No. 1037, § 1; 2019, No. 910, § 5133.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a)(1).

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Civil Rights, 11 U. Ark. Little Rock L.J. 149.

CASE NOTES

ANALYSIS

Limited Jurisdiction.
Placement with DHS.
Reasonable Efforts.
Social Worker.

Limited Jurisdiction.

Circuit court's February 26, 2009 order directing the Department of Human Services (DHS) to place the mother at Timber Ridge Ranch clearly violated the plain language of subsection (b) of this section; therefore, the order was erroneous on its face, and although a court could order DHS to make family services available, its custodial jurisdiction was limited to juveniles. Ark. Dep't of Human Servs. v. Denmon, 2009 Ark. 485, 346 S.W.3d 283 (2009).

Placement with DHS.

Trial court did not clearly err in continuing custody in the Department of Human Services (DHS) where the mother had failed to take advantage of parenting classes designed to provide safe and appropriate discipline techniques, and the trial court specifically found that continuing custody with DHS was in the children's best interests and for their protection and safety. Walker v. Ark. Dep't of Human Servs., 2017 Ark. App. 627, 534 S.W.3d 184 (2017).

Reasonable Efforts.

Circuit court did not err in adjudicating a child dependent-neglected because reasonable efforts were not necessary under subdivision (e)(2)(C) of this section, and neither parent challenged the circuit

court's findings that the child's continued custody with the Department of Human Services was "in the juvenile's best interests and necessary for the protection of the juvenile's health and safety" and that neither parent could adequately protect the child's health and safety. *Day v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 51, 595 S.W.3d 26 (2020).

Social Worker.

In a case involving custody of an Oklahoma child who was left unattended by

his mother in Arkansas, the issue of whether a social worker was qualified to conduct a home study was waived where no objection was made before a trial court. *Ark. Dep't of Health & Human Servs. v. Jones*, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

9-27-336. Limitations on detention.

(a) A juvenile who is alleged to be or who has been adjudicated either dependent-neglected or a member of a family in need of services shall not be placed or detained in a secure detention facility, in a facility utilized for the detention of alleged or adjudicated delinquent juveniles, or in a facility utilized for the detention of adults held for, charged with, or convicted of a crime except:

(1)(A) A juvenile may be held in a juvenile detention facility when he or she has been away from home for more than twenty-four (24) hours and when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or out of state.

(B)(i) The juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(C)(i) A juvenile held under this subdivision (a)(1) shall be separated from detained juveniles charged or held for delinquency.

(ii) A juvenile may not be held under this subdivision (a)(1) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state; and

(2)(A) An adjudicated-family-in-need-of-services juvenile may be held in a juvenile detention facility when the court finds that the juvenile violated a valid court order.

(B)(i) For the purposes of this subdivision (a)(2), a valid court order shall include any order of a circuit court regarding a juvenile who has been brought before the court and made subject to a court order.

(ii) The juvenile who is the subject of the order shall receive full due process rights.

(C)(i) A juvenile held under this subdivision (a)(2) shall be separated from detained juveniles charged or held for delinquency.

(ii) The holding shall not occur in any facility utilized for incarceration of adults.

(b) A juvenile shall not be placed or confined in a jail or lock-up used for the detention of adults except under the following circumstances:

(1) A juvenile who has been formally transferred from the juvenile division of circuit court to the criminal division of circuit court and against whom felony charges have been filed or a juvenile whom the prosecuting attorney has the discretion to charge in circuit court and to prosecute as an adult and against whom the circuit court's jurisdiction has been invoked by the filing of felony charges may be held in an adult jail or lock-up;

(2)(A) A juvenile alleged to have committed a delinquent act may be held in an adult jail or lock-up for up to six (6) hours for purposes of identification, processing, or arranging for release or transfer to an alternative facility, provided that he or she is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B) A holding for those purposes shall be limited to the minimum time necessary and shall not include travel time for transporting the juvenile to the alternative facility; or

(3)(A) A juvenile alleged to have committed a delinquent act who is awaiting an initial appearance before a judge may be held in an adult jail or lock-up for up to twenty-four (24) hours, excluding weekends and holidays, provided the following conditions exist:

(i) The alleged act would be a misdemeanor or a felony if committed by an adult or is a violation of § 5-73-119;

(ii) The geographical area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the current designation of the United States Bureau of the Census;

(iii) No acceptable alternative placement for the juvenile exists; and

(iv) The juvenile is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B)(i) A juvenile awaiting an initial appearance and being held in an adult jail or lock-up pursuant to the twenty-four-hour exception, as provided in subdivision (b)(3)(A) of this section, may be held for an additional period not to exceed twenty-four (24) hours, provided that the following conditions exist:

(a) The conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within twenty-four (24) hours; and

(b) All the conditions in subdivision (b)(3)(A) of this section exist.

(ii) Criteria will be adopted by the Governor or his or her designee to establish what distance, highway or road conditions, or ground transportation limitations will provide a basis for holding a juvenile in an adult jail or lock-up under this exception.

(c) Provided that the facilities are designed and used in accordance with federal and state guidelines and restrictions, nothing in this subchapter is intended to prohibit the use of juvenile detention facilities that are attached to or adjacent to adult jails or lock-ups.

(d) A detention facility shall not release a serious offender for a less serious offender except by order of the judge who committed the more serious offender.

History. Acts 1989, No. 273, § 35; 1989 (3rd Ex. Sess.), No. 76, § 1; 1994 (2nd Ex. Sess.), No. 55, § 3; 1994 (2nd Ex. Sess.), No. 56, § 3; 1997, No. 1118, § 5; 2003, No. 1166, § 18; 2005, No. 1962, § 20.

CASE NOTES

Detention Order Invalid.

Where a juvenile was deprived of his right to counsel during a contempt proceeding because the juvenile only had the services of an attorney ad litem and not a defense attorney, the juvenile's due process rights were violated, the court's or-

ders were invalid and, under subdivisions (a)(2)(A) and (B) of this section, the trial court, not having issued a valid order, could not order the juvenile to be detained at the juvenile detention facility. Ark. Dep't of Human Servs. v. Mainard, 358 Ark. 204, 188 S.W.3d 901 (2004).

9-27-337. Six-month reviews required.

(a)(1) The court shall review every case of dependency-neglect or families in need of services when:

(A) A juvenile is placed by the court in the custody of the Department of Human Services or in another out-of-home placement until there is a permanent order of custody, guardianship, or other permanent placement for the juvenile; or

(B) A juvenile is returned to the parent from whom the child was removed, another fit parent, guardian, or custodian and the court has not discontinued orders for family services.

(2)(A) The first six-month review shall be held no later than six (6) months from the date of the original out-of-home placement of the child and shall be scheduled by the court following the adjudication and disposition hearing.

(B) It shall be reviewed every six (6) months thereafter until permanency is achieved.

(b) The court may require these cases to be reviewed prior to the sixth-month review hearing, and the court shall announce the date, time, and place of the hearing.

(c) At any time during the pendency of any case of dependency-neglect or families in need of services in which an out-of-home placement has occurred, any party may request the court to review the case, and the party requesting the hearing shall provide reasonable notice to all parties.

(d) At any time during the course of a case, the department, the attorney ad litem, or the court can request a hearing on whether or not reunification services should be terminated pursuant to § 9-27-327(a)(2).

(e)(1) In each case in which a juvenile has been placed in an out-of-home placement, the court shall conduct a hearing to review the case sufficiently to determine the future status of the juvenile based upon the best interest of the juvenile.

(2)(A) The court shall determine and include in its orders the following:

(i) Whether the case plan, services, and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;

(ii) Whether the state has made reasonable efforts to provide family services;

(iii) Whether the parent or parents or person from whom custody was removed has demonstrated progress toward the goals of the case plan and whether completion of the goals has benefited the parent in remedying the issues that prevent the safe return of the juvenile;

(iv) Whether the case plan is moving toward an appropriate permanency plan under § 9-27-338 for the juvenile;

(v) Whether the visitation plan is appropriate for the juvenile, the parent or parents, and any siblings, if separated; and

(vi)(a) Whether the juvenile should be returned to his or her parent or parents and whether or not the juvenile's health and safety can be protected by his or her parent or parents if returned home, either permanently or for a trial placement.

(b) At any time the court determines that the health and safety of the child can be adequately protected and it is in the best interest of the child, the court shall return the child to a parent or parents from whom custody was removed.

(B)(i) The court may order any studies, evaluations, or post-disposition reports, if needed.

(ii) All studies, evaluations, or post-disposition reports shall be provided in writing to all parties and counsel at least two (2) days before the review hearing.

(iii) All parties shall be given a fair opportunity to controvert any part of a study, evaluation, or post-disposition report.

(3)(A) In making its findings, the court shall consider the following:

(i) The extent of compliance with the case plan, including without limitation a review of the department's care for the health, safety, and education of the juvenile while he or she has been in an out-of-home placement;

(ii) The extent of progress that has been made toward alleviating or mitigating the causes of the out-of-home placement;

(iii) Whether the juvenile should be returned to his or her parent or parents and whether or not the juvenile's health and safety can be protected by his or her parent or parents if returned home; and

(iv) An appropriate permanency plan under § 9-27-338 for the juvenile, including concurrent planning.

(B) Incompletion of the case plan under subdivision (e)(3)(A)(i) of this section is an insufficient reason by itself to deny the juvenile's return to the family home.

(f) Each six-month review hearing shall be completed, and the written order under subsection (e) of this section shall be filed by the court or by a party or a party's attorney as designated by the court and

distributed to the parties within thirty (30) days of the date of the hearing or before the next hearing, whichever is sooner.

History. Acts 1989, No. 273, § 36; 1995, No. 404, § 1; 1995, No. 533, § 12; 1995, No. 1337, § 8; 1997, No. 1227, § 11; 1999, No. 401, § 12; 2001, No. 987, § 5; 2001, No. 1503, § 11; 2005, No. 1191, § 3; 2005, No. 1990, § 17; 2007, No. 587, § 20; 2013, No. 490, § 1; 2017, No. 701, § 4.

Amendments. The 2017 amendment

redesignated former (e)(1) and (2) as (e) and (f) and redesignated the subdivisions within present (e) accordingly; inserted (e)(2)(A)(iii) and added (e)(2)(A)(vi); added (e)(3)(B); substituted “the written order under subsection (e) of this section” for “a written order” in (f); and made stylistic changes.

CASE NOTES

ANALYSIS

Applicability.
Attorney’s Fees.
Hearing Required.

Applicability.

Once the juvenile court took jurisdiction of a matter as a dependent-neglect case, the Juvenile Code provisions became applicable; that being so, the juvenile court was obliged to provide for periodic reviews under this section and § 9-27-338. *Nance v. Ark. Dep’t of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

There is no authority for a juvenile court to dismiss dependent-neglect proceedings when the parties all comply with the case plan and reasonable efforts are being made by all concerned; periodic review should be continued, regardless of such compliance. *Nance v. Ark. Dep’t of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

Attorney’s Fees.

Order requiring the Department of Health and Human Services to pay for an

attorney for a child in its custody who had been accused of sexual misconduct was upheld pursuant to § 9-27-334; providing the child with an attorney, in order to keep the child off the sex offender list, would greatly assist in the child’s adoption. *Ark. Dep’t of Health & Human Servs. v. C.M.*, 100 Ark. App. 414, 269 S.W.3d 387 (2007).

Hearing Required.

Circuit court clearly erred in denying a father’s motion to place a child with the child’s paternal uncle and the uncle’s wife, who were stationed in Germany, where a home study did not show anything suggesting that placement with the relatives was not in the child’s best interests or that the relatives were unfit, it failed to conduct a mandatory review hearing required by this section, and thus, it had inappropriately ignored the statutory preference for relative placement in § 9-27-355(b)(1) and § 9-28-105. *Ellis v. Ark. Dep’t of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

9-27-338. Permanency planning hearing.

(a)(1) A permanency planning hearing shall be held to finalize a permanency plan for the juvenile:

(A) No later than twelve (12) months after the date the juvenile enters an out-of-home placement;

(B) After a juvenile has been in an out-of-home placement for fifteen (15) of the previous twenty-two (22) months, excluding trial placements and time on runaway status; or

(C) No later than thirty (30) days after a hearing granting no reunification services.

(2) If a juvenile remains in an out-of-home placement after the initial permanency planning hearing, a permanency planning hearing shall be held annually to reassess the permanency plan selected for the juvenile.

(b)(1) This section does not prevent the Department of Human Services or the attorney ad litem from filing at any time prior to the permanency planning hearing a:

- (A) Petition to terminate parental rights;
- (B) Petition for guardianship; or
- (C) Petition for permanent custody.

(2) A permanency planning hearing is not required prior to any of these actions.

(c) At the permanency planning hearing, based upon the facts of the case, the circuit court shall enter one (1) of the following permanency goals, listed in order of preference, in accordance with the best interest, health, and safety of the juvenile:

(1) Placing custody of the juvenile with a fit parent at the permanency planning hearing;

(2) Returning the juvenile to the guardian or custodian from whom the juvenile was initially removed at the permanency planning hearing;

(3) Authorizing a plan to place custody of the juvenile with a parent, guardian, or custodian only if the court finds that:

(A)(i) The parent, guardian, or custodian is complying with the established case plan and orders of the court, making significant and measurable progress toward achieving the goals established in the case plan and diligently working toward reunification or placement in the home of the parent, guardian, or custodian.

(ii) Regardless of when the effort was made, the court shall consider all evidence of an effort made by the parent, guardian, or custodian to remedy the conditions that led to the removal of the juvenile from the custody of the parent, guardian, or custodian and give the evidence the appropriate weight and consideration in relation to the safety, health, and well-being of the juvenile.

(iii) The burden is on the parent, guardian, or custodian to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court in order to authorize a plan to return or be placed in the home as the permanency goal;

(B) The parent, guardian, or custodian is making significant and measurable progress toward remedying the conditions that:

(i) Caused the juvenile's removal and the juvenile's continued removal from the home; or

(ii) Prohibit placement of the juvenile in the home of a parent; and

(C)(i) Placement of the juvenile in the home of the parent, guardian, or custodian shall occur within a time frame consistent with the juvenile's developmental needs but no later than three (3) months from the date of the permanency planning hearing.

(ii) The court may authorize a plan to place custody of a juvenile with a parent, guardian, or custodian of the juvenile despite finding

that placement of the juvenile in the home of the parent, guardian, or custodian of the juvenile may not occur within the three-month period required under subdivision (c)(3)(C)(i) of this section if the plan is in the best interest of the child during extraordinary circumstances.

(iii) As used in this subdivision (c)(3)(C), “extraordinary circumstances” includes without limitation the following circumstances:

(a) The Supreme Court orders the suspension of in-person court proceedings; and

(b) One (1) of the following has occurred:

(1) The President of the United States has declared a national emergency; or

(2) The Governor has declared a state of emergency or a statewide public health emergency;

(4) Authorizing a plan to obtain a guardianship or adoption with a fit and willing relative;

(5) Authorizing a plan for adoption with the department’s filing a petition for termination of parental rights unless:

(A) The juvenile is being cared for by a relative and the court finds that:

(i) Either:

(a) The relative has made a long-term commitment to the child and the relative is willing to pursue guardianship or permanent custody; or

(b) The juvenile is being cared for by his or her minor parent who is in foster care; and

(ii) Termination of parental rights is not in the best interest of the juvenile;

(B) The department has documented in the case plan a compelling reason why filing a petition for termination of parental rights is not in the best interest of the juvenile and the court approves the compelling reason as documented in the case plan; or

(C)(i) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, the services as the department deemed necessary for the safe return of the juvenile to the juvenile’s home if reunification services were required to be made to the family.

(ii) If the department has failed to provide services as outlined in the case plan, the court shall schedule another permanency planning hearing for no later than six (6) months;

(6) Authorizing a plan to obtain a guardian for the juvenile;

(7) Authorizing a plan to obtain a permanent custodian, including permanent custody with a fit and willing relative; or

(8)(A) Authorizing a plan for another planned permanent living arrangement that includes a permanent planned living arrangement and addresses the quality of services, including, but not limited to, independent living services and a plan for the supervision and nurturing the juvenile will receive.

(B) Another planned permanent living arrangement shall be selected only if:

(i) The department has documented to the circuit court a compelling reason for determining that it would not be in the best interest of the child to follow one (1) of the permanency plans identified in subdivisions (c)(1)-(7) of this section and this subdivision (c)(8);

(ii) The child is sixteen (16) years of age or older; and

(iii) The court makes a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the juvenile and the court finds compelling reasons why it continues to not be in the best interest of the juvenile to:

(a) Return home;

(b) Be placed for adoption;

(c) Be placed with a legal guardian; or

(d) Be placed with a fit and willing relative.

(d) At the permanency planning hearing on a juvenile sixteen (16) years of age or older, the court shall ask the juvenile his or her desired permanency outcome, or the attorney ad litem shall enter evidence concerning the child's wishes.

(e) At every permanency planning hearing the court shall make a finding on whether the department has made reasonable efforts and shall describe the efforts to finalize a permanency plan for the juvenile.

(f) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(g) If the court determines that the permanency goal is adoption, the department shall file the petition to terminate parental rights within thirty (30) days from the date of the permanency planning hearing that establishes adoption as the permanency goal.

(h)(1) The court shall determine if establishing concurrent permanency planning goals is appropriate.

(2) If the court determines that establishing concurrent permanency planning goals is appropriate, the court shall establish all appropriate permanency planning goals subject to the requirements of this section.

(3) If the court sets a goal of adoption, reunification services shall continue to be provided unless the court:

(A) Determines that the reunification services are no longer needed;

(B) Terminates parental rights; or

(C) Otherwise finalizes a permanency plan for the juvenile.

History. Acts 1989, No. 273, § 37; 2017, No. 996, §§ 1, 2; 2019, No. 984, 1995, No. 1337, § 9; 1997, No. 1227, § 12; §§ 1, 2; 2020, No. 144, § 40.
1999, No. 401, § 13; 2001, No. 1503, § 12;
2003, No. 1319, § 22; 2005, No. 1191, § 4;
2009, No. 956, § 17; 2011, No. 1175, § 8;
2013, No. 490, § 2; 2015, No. 1038, § 2;

A.C.R.C. Notes. Acts 2020, No. 144, § 42, provided: "Retroactivity. Sections 39 through 41 of this act apply retroactively to cases that are pending as of the effec-

tive date of Sections 39 through 41 of this act.”

Amendments. The 2015 amendment deleted “if age appropriate” following “living services” in (c)(7)(A); inserted designation (c)(7)(B)(i); added (c)(7)(B)(ii) and (iii) [subdivision (c)(7) is now (c)(8)]; inserted present (d); and redesignated the remaining subsections accordingly.

The 2017 amendment redesignated former (c)(3)(A)(i) as (c)(3)(A)(i)(a); inserted “and” following “significant” in present (c)(3)(A)(i)(a); inserted (c)(3)(A)(i)(b); redesignated former (c)(3)(A)(ii) and (iii) as present (c)(3)(A)(i)(c) and (d); in present (c)(3)(A)(i)(c), substituted “time period” for “months or weeks” and “for the juvenile to return to or to be placed” for “to return or

be placed”; redesignated former (c)(3)(B)(i) and (ii) as (c)(3)(B) and (C); added (h); and made stylistic changes.

The 2019 amendment deleted the (c)(3)(A)(i)(a) designation; redesignated (c)(3)(A)(i)(b) as (c)(3)(A)(ii); rewrote (c)(3)(A)(ii); deleted (c)(3)(A)(i)(c); redesignated (c)(3)(A)(i)(d) as (c)(3)(A)(iii); inserted (c)(4) and redesignated the remaining subdivisions accordingly; substituted “filing a petition for termination of parental rights is not in the best interest” for “filing such a petition is not in the best interest” in (c)(5)(B); and made a stylistic change.

The 2020 amendment added (c)(3)(C)(ii) and (iii).

CASE NOTES

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In General.

In a termination of parental rights case, the trial court is required to hold a permanency planning hearing no later than 12 months after the date the juvenile enters an out-of-home placement or no later than 30 days after the court files a no-reunification order; this “or” disjunctive located in the language of the statute does not provide the court with merely one option as to when it can hold a permanency planning hearing, but rather, the “12 month” language provides the court the option to hold the hearing even before it has filed the no-reunification order. *Phillips v. Ark. Dep’t of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004) (decided in part under prior version of § 9-27-341).

Order terminating mother’s parental rights to her three children pursuant to § 9-27-341 was upheld as the trial court did not err in placing the oldest child in the custody of a family friend; subsection (c) of this section clearly anticipated that

one of the “goals” could be a plan for permanent custody. *Griffin v. Ark. Dep’t of Health and Human Servs.*, 95 Ark. App. 322, 236 S.W.3d 570 (2006).

Applicability.

Once the juvenile court took jurisdiction of a matter as a dependent-neglect case, the Juvenile Code provisions became applicable; that being so, the juvenile court was obliged to provide for periodic reviews under this section and § 9-27-337. *Nance v. Ark. Dep’t of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

There is no authority for a juvenile court to dismiss dependent-neglect proceedings when the parties all comply with the case plan and reasonable efforts are being made by all concerned; periodic review should be continued, regardless of such compliance. *Nance v. Ark. Dep’t of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

Nothing in this section prohibited the trial court from holding a permanency planning hearing immediately, given that it had already provided notice of no reunification and the DHS’s petition to terminate; in addition, the trial court’s subsequently termination of the parents’ parental rights was not error when, under § 9-27-341, the fact that the parents had had their parental rights terminated as to their other children was an immediate ground for termination. *Phillips v. Ark. Dep’t of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004) (decided in part under prior version of § 9-27-341).

Mother who was denied reunification with her daughter and who contended that a circuit court erred in using a previous version of this section, rather than the amended version, waived her contention that the amended version should have been applied by failing to object at the circuit court level. *Lamontagne v. Ark. Dep't of Human Servs.*, 2010 Ark. 190, 366 S.W.3d 351 (2010).

Best Interest of Child.

Circuit court erred in granting permanent custody of a child to a grandmother; while it was not appropriate to return him to his mother at the time of the permanency-planning hearing, there was insufficient evidence to find that placement could not occur within three months and it was not in the child's best interest where the mother was in compliance with her case plan and was making significant progress toward remedying the conditions that caused the child's removal. *Contreras v. Ark. Dep't of Human Servs.*, 2014 Ark. 51, 431 S.W.3d 297 (2014).

Placement with the father's sister was far from an immediately available alternative for the children, as the sister was equivocal about the placement, the children were thriving in their foster home, with foster parents interested in adopting them, and they needed permanency, plus the father had been sentenced to a lengthy prison term, which supported a finding that termination and adoption would be in their best interest, and the finding was not clearly erroneous. *Gyalog v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 302, 461 S.W.3d 734 (2015).

Trial court properly found that it was not in the children's best interest to be permanently placed in the relatives' custody because the relatives did not believe that the mother abused the children and a forensic psychologist opined that it would be psychologically damaging to the children to be placed with relatives who did not believe that they had been abused by their parent. *Ferguson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 258, 492 S.W.3d 880 (2016).

Trial court did not clearly err in finding that permanent custody of the 15-year-old juvenile with the foster parents, under subdivision (c)(6) [now (c)(7)] of this section ("Authorizing a plan to obtain a permanent custodian, including permanent

custody with a fit and willing relative"), was in the juvenile's best interest; the testimony demonstrated that the mother had significant and chronic financial issues, was noncompliant with the Department of Human Services and the case plan, had mental health issues, and the juvenile strongly preferred not to be returned to the mother. *Donham v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 698, 536 S.W.3d 675 (2017).

Change in Case Goal.

In a case involving termination of parental rights, it was not error to change a case-plan goal from reunification to adoption at a permanency-planning hearing because the child could not have been returned to a fit parent and was not being cared for by a relative at the time of the hearing. *Roberts v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 226, 490 S.W.3d 334 (2016).

Parents' challenge to an intermediate permanency-planning order lacked merit where they were provided a reunification opportunity through a subsequent trial home placement and thus were not harmed by a change in case goal to include concurrent goals of adoption and reunification at the time of the permanency-planning hearing. *Bean v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 77, 513 S.W.3d 859 (2017).

Circuit court did not clearly err in determining a permanency plan for a mother's children because the court found that the mother failed to make significant measurable progress to achieve stability and that respective goal changes for the children were in their best interest. *Johnston v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 615, 534 S.W.3d 200 (2017).

Circuit court did not clearly err in changing the goal in the case from reunification to termination and adoption because the mother had failed to protect her children as she dismissed the order of protection and allowed her husband to move back into the family home after the eldest child accused him of sexual abuse; and, while the mother contended on appeal that her separation from her husband constituted significant progress toward remedying the conditions that caused removal, she chose to ignore the court's orders for almost a year before finally separating from her husband one

month before the permanency-planning hearing. *Drane v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 256, 576 S.W.3d 550 (2019).

Construction With Other Law.

Where the petition to terminate parental rights was filed 69 days after the permanency-planning hearing, contrary to the 30-day requirement in subsection (g) of this section, the circuit court was not required to dismiss the petition or hold a second permanency-planning hearing. Section 9-27-341(b)(1)(B) provides that a permanency-planning hearing is not required as a prerequisite to termination and the statutes do not provide a remedy for late filing. In addition, prejudice was not shown, and time is viewed from the juvenile's perspective in termination cases. *Faussett v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 168 (2017).

Circuit court erred in failing to hold a permanency-planning hearing because by choosing to hold a termination of parental rights hearing before such a hearing, it placed itself in a position of determining whether a hearing was required, contrary to the mandatory language of the statute; however, to reverse the order terminating parental rights would be perfunctory in purpose given the record and contrary to the best interests of the children, who had already been out of the home. *McKinney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 475, 527 S.W.3d 778 (2017).

While a termination of parental rights petition may be filed and considered prior to a permanency-planning hearing, there is nothing in § 9-27-341 or § 9-27-338 that permits the circuit court to abdicate its duty to hold a permanency-planning hearing altogether. *McKinney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 475, 527 S.W.3d 778 (2017).

Custody Award.

Where a mother made unsubstantiated sexual abuse allegations, a trial court did not err by awarding custody to a father in a family-in-need-of-services case under this section, because it was not in the child's best interest to return to the mother where the child was doing better while not in her custody; moreover, the father did not have to show a material change in circumstances since this was not a regular custody proceeding. *Judkins*

v. Duvall, 97 Ark. App. 260, 248 S.W.3d 492 (2007), overruled in part, *Mahone v. Ark. Dep't of Human Servs.*, 2011 Ark. 370, 383 S.W.3d 854 (2011).

After a permanency hearing, the circuit court did not clearly err in placing the child in the custody of his mother under subsection (c) of this section; less than 14 months prior to the final hearing, the father hit the child with the ruler. The child thrived in his mother's care, while the father needed to continue with therapy and complete anger-management classes. *Collier v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 565 (2009).

Order granting foster parents' petition for adoption of a child and dismissing a maternal grandmother's petition for guardianship was proper because the trial court did not err by giving effect to the statutory preference for adoption. *Davis-Lewallen v. Clegg*, 2010 Ark. App. 627, 378 S.W.3d 185 (2010).

Trial court did not err under subsection (c) of this section in determining that an award of permanent custody to a maternal grandmother was in a child's best interest because it was contrary to the child's health and safety to be returned to the child's mother; the mother failed to maintain steady employment or a stable residence and had numerous criminal charges in the past several years. *Beeson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 317, 378 S.W.3d 911 (2011).

Award of permanent custody of the children to their maternal grandmother was inappropriate because the first statutory preference, under subdivision (c)(1) of this section, applied to the father since he was a parent of the children. The first preference of the statute was not to return the child to the parent from whom he had been taken. *Mahone v. Ark. Dep't of Human Servs.*, 2011 Ark. 370, 383 S.W.3d 854 (2011).

Trial court erred in awarding permanent custody to maternal grandparents because while the children's father had some issues to resolve, since the case was commenced, a mere six months before the trial court awarded the grandparents custody, he had no positive drug tests, maintained employment, and was living in an approved housing situation with his parents; the father fell into the first preference category in subsection (c) of this section while the grandparents fell into

the fifth category. *Chase v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 311, 416 S.W.3d 252 (2012).

Court erred in awarding custody of a father's two children to the maternal grandparents because it was inconceivable that the court could find the father unfit and untruthful because of a twelve-dollar difference between an earlier affidavit and pay stubs, and even though there was evidence regarding use of alcohol and allegations of "kicking" his child, visitation was not limited. *Chase v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 474, 429 S.W.3d 321 (2013).

Maternal grandparents were properly awarded permanent custody of a child because the child could not have been returned to a mother within 3 months; the mother's testimony about her drug use and rehabilitation efforts was untruthful, and she did not comply with the case plan or court orders relating to drug use, stable housing, and stable employment. Moreover, the mother had not made substantial progress toward remedying the conditions causing the removal. *Ragsdale v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 159 (2014).

In a dependency and neglect case, a trial court did not err by awarding custody of a child to his biological father because the term "the parent" under subsection (c) of this section did not mean only the parent from whom the child was removed, but instead meant either parent. The question was not whether the mother had remedied the cause for the child's removal, but instead whether the trial court clearly erred in finding that it would be in the child's best interest to be returned to his father, rather than the mother; the trial court could have reasonably concluded that the father demonstrated greater stability and little susceptibility to the sort of dramatically poor judgment exercised by the mother. *Fogerson v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 232 (2014).

Circuit court's order placing a child in the permanent custody of a family member was affirmed where the mother's arguments essentially asked the court to reweigh the evidence in her favor, a de novo review of the records revealed that the circuit court's findings were not clearly erroneous, and based on the circuit's court's opportunity to judge the

credibility of the witnesses, it did not err in determining that permanent custody with the family member was in the child's best interest. *Sisemore v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 187, 487 S.W.3d 824 (2016).

Circuit court's decision to grant custody of a child to his paternal uncle was not clearly erroneous since it was in the child's best interest; moreover, it was contrary to the child's health and safety to be returned to his mother's custody. The mother had a significant history with the Department of Human Services and a long-term alcohol problem; even though she had attended some parenting classes, counseling, and Alcoholics Anonymous meetings, the uncle was able to provide the stability and parental control that the mother could not achieve. *Moore v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 346, 498 S.W.3d 303 (2016).

Circuit court did not clearly err in bypassing the first, second, and third goals of subsection (c) of this rule and placing permanent custody of a child with her paternal grandparents where the mother's current husband posed a danger to the child and her relationship with him was uncertain, and the mother had nine months remaining in a drug-court program, had two recent altercations with the husband, and had recently been arrested for an unresolved warrant. *Lansdell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 433, 502 S.W.3d 579 (2016).

Circuit court did not err in entering an order awarding permanent-relative custody of two of the mother's minor children to their grandparents because the evidence and testimony supporting the circuit court's potential-harm finding was sufficient; one of the children alleged that the mother's boyfriend sexually assaulted him; the mother insisted that the boyfriend was not a dangerous person for her children to be around and that she never got the full evidence regarding the boyfriend's sexual abuse of her child; and, based on the transcript of the mother's phone call with the boyfriend and the witnesses' testimony, the mother continued to have a relationship with the boyfriend. *Arazola v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 109, 573 S.W.3d 35 (2019).

In a dependency-neglect case, children were not entitled to reversal of an order

granting permanent custody to their paternal uncle and aunt, where children argued instead for termination of parental rights and adoption. The circuit court did make a finding that termination of parental rights was not in the children's best interest; further, there is no remedy provided by the legislature for lack of a home study in the home-study requirement set forth in § 9-27-355, and the evidence relied on by the children—that their aunt and uncle were stellar and that the children were thriving there—negated their argument that without a home study, the evidence was insufficient to support custody being placed with the aunt and uncle. *Minor Children v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 588, 589 S.W.3d 495 (2019).

Failure to Preserve.

Mother failed to preserve for appellate review her contention that a trial court's decision to terminate her parental rights was improper where the child had achieved permanency through a custodial placement with a relative under subsection (c) of this section. The mother failed to designate the permanency-planning hearing in her notice of appeal, the transcript of the permanency-planning hearing was not in the record, and there was no indication in the transcript of the termination hearing that the mother ever raised this argument before the trial court. *Bryant v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 390, 383 S.W.3d 901 (2011).

As parents failed to appeal prior reasonable-efforts findings regarding reunification services offered to them pursuant to this section and § 9-27-359, an appellate court was precluded from reviewing those findings for the time periods covered by the prior orders. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 522, 385 S.W.3d 367 (2011).

Goal of Statute.

This section lists termination and adoption as a preference above permanent custodial placement with a relative, which is in keeping with the overall goal of permanency for the juvenile. *Gyalog v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 302, 461 S.W.3d 734 (2015) (decided under prior version of statute).

Public Policy.

According to the public policy of Arkansas, termination and adoption are preferred to permanent relative placement. *McElwee v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 214, 489 S.W.3d 704 (2016) (decided under prior version of statute).

Circuit court did not err in rejecting incarcerated father's request to have his child placed with relatives rather than terminate his parental rights; under this section and according to Arkansas public policy, termination and adoption are preferred to permanent relative placement when the child is not in the care of a relative at the time of the termination hearing. *Everett v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 541, 506 S.W.3d 287 (2016) (decided under prior version of statute).

Termination.

Trial court did not err by following the statutory preference for the termination of parental rights under subsection (c) of this section, even though two children were being cared for by their grandmother, since it was not in the children's best interest to return them to the father due to allegations of physical and sexual abuse. *Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, 278 S.W.3d 609 (2008).

In a termination of parental rights case, a mother was not entitled to additional time to achieve goals for reunification because the mother had a history of drug addiction, and she had been given 16 months to accomplish reunification, yet she was still 15 weeks away from completing her rehabilitation. *Stephens v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 249, 427 S.W.3d 160 (2013).

Trial court properly authorized adoption and termination of parental rights because the mother physically abused the children and the father failed to protect them where his lack of attachment and apathy toward the children and passivity and submissiveness to the mother prevented him from making significant, measurable progress toward remedying the conditions that caused removal and from reunifying with the children. *Ferguson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 258, 492 S.W.3d 880 (2016).

Trial court committed reversible error in changing the goal of a permanency-planning case to termination and adop-

tion where contrary to the court's finding, the undisputed testimony showed that the children were being cared for by their aunt in provisional foster care, and there was no testimony that the placement needed to change or that the aunt was unwilling to continue to care for the children. *Adkins v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 229, 518 S.W.3d 746 (2017).

Although the trial court could have still found that termination of parental rights and adoption was in the children's best interest, the record did not indicate that it had considered the additional factors enumerated in this section because it erroneously found that the children were not being cared for by a relative, and thus a remand was warranted. *Adkins v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 229, 518 S.W.3d 746 (2017).

Circuit court properly terminated the mother's parental rights because the statutory provision for relative placement includes adoption, thus contemplating that parental rights may be terminated even when a relative is available for placement; as the child was not in the custody of a relative at the time of termination, and termination was in the child's best interest, the exceptions in subsection (c) of this section did not apply. *Robinson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 251, 520 S.W.3d 702 (2017) (decided under prior version of statute).

Trial court did not clearly err in terminating a mother's parental rights where it

was open to considering improvements the mother had made after the first permanency-planning hearing, the goal of permanency planning was not changed until after the second permanency planning hearing, and even after the additional time following the second hearing, the mother was still not ready to have the children returned to her custody. *Jameson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 503, 529 S.W.3d 692 (2017).

Neither § 9-27-338 nor § 9-27-359 required that the mother be given 15 months to improve her situation and parenting skills, especially in light of her failure to improve her parenting skills in the 19-month period before her parental rights to another child were terminated. While it is permissible to allow 15 months (or more) in some cases, it is not a requirement. *Benson v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 65 (2018).

Cited: *Ark. Dep't of Human Servs. v. Farris*, 309 Ark. 575, 832 S.W.2d 482 (1992); *Moore v. Ark. Dep't of Human Servs.*, 333 Ark. 288, 969 S.W.2d 186 (1998); *Larscheid v. Ark. Dep't of Human Servs.*, 343 Ark. 580, 36 S.W.3d 308 (2001); *Davis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 419 (2012); *Cox v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 202, 462 S.W.3d 670 (2015); *Villaros v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 399, 500 S.W.3d 763 (2016); *Strickland v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 608, 567 S.W.3d 870 (2018).

9-27-339. Probation — Revocation.

(a)(1) After an adjudication of delinquency, the court may place a juvenile on probation. The conditions of probation shall be given to the juvenile in writing and shall be explained to him or her and to his or her parent, guardian, or custodian by the probation officer in the initial conference following the disposition hearing.

(2) The court shall notify the Division of Youth Services in its commitment order of the order of probation including the juvenile's compliance with the division's aftercare plan, if provided in the treatment plan.

(b) Any violation of a condition of probation may be reported to the prosecuting attorney, who may initiate a petition in the court for revocation of probation. A petition for revocation of probation shall contain specific factual allegations constituting each violation of a condition of probation.

(c) The petition alleging violation of a condition of probation and seeking revocation of probation shall be served upon the juvenile, his or her attorney, and his or her parent, guardian, or custodian.

(d) A revocation hearing shall be set within a reasonable time after the filing of the petition, or within fourteen (14) days if the juvenile has been detained as a result of the filing of the petition for revocation.

(e) If the court finds by a preponderance of the evidence that the juvenile violated the terms and conditions of probation, the court may:

(1) Extend probation;

(2) Impose additional conditions of probation; or

(3) Make any disposition that could have been made at the time probation was imposed under § 9-27-330.

(f)(1) Nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his or her part to make a good faith effort to obtain the funds required for payment.

(2) In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(3) If the court determines that the default in payment of a fine, costs, or restitution is excusable under subdivision (f)(1) of this section, the court may enter an order allowing the juvenile additional time for payment, reducing the amount of each installment, or revoking the fine, costs, or restitution or unpaid portion thereof in whole or in part.

History. Acts 1989, No. 273, § 38; 1994 Sess.), No. 70, § 2; 2009, No. 956, §§ 18, (2nd Ex. Sess.), No. 69, § 2; 1994 (2nd Ex. 19.

CASE NOTES

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Order of Court Proper.

Petition to Revoke Probation.

Double Jeopardy.

Double jeopardy attaches within the meaning of the Fifth Amendment (U.S. Const. Amend. 5), as applicable to the states under the Fourteenth Amendment (U.S. Const. Amend. 14), in an adjudicatory delinquency proceeding in juvenile court. *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

Evidence.

Court properly admitted juvenile's statements at a probation revocation proceeding to her probation officer regarding taking drugs because § 9-27-321 protected juveniles from Miranda violations in a pre-adjudication context, not at a revocation hearing; in addition, the statement was properly admitted because the statement was offered to prove that defendant had violated the terms of her probation. *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

State met its burden of proving by a preponderance of the evidence that defendant failed to comply with the conditions of his probation where defendant was in possession of medication that was not

prescribed to him, knew it was wrong, but did not care about the consequences of his behavior. *W.T. v. State*, 2009 Ark. App. 773 (2009).

In a case in which a minor was adjudicated delinquent pursuant to the juvenile court's finding that he committed the criminal offense of misdemeanor theft by receiving, in violation of § 5-36-106(a), the trial court did not err by revoking the minor's probation from a previous adjudication. He was required to obey all state, federal, and municipal laws as a condition of his probation, and substantial evidence supported the trial court's decision to adjudicate him delinquent. *R.W. v. State*, 2010 Ark. App. 220 (2010).

State proved that defendant committed terroristic threatening and thereby violated his probation because defendant would not share a basketball court with younger children, defendant replied with an expletive when asked to leave, and as defendant began to leave, he threatened that he would be back to "shoot the place up." *M.L. v. State*, 2013 Ark. App. 130 (2013).

Notice.

Where there has been a first disposition denying revocation of probation, this section requires the prosecutor to file another petition for revocation and give notice to the delinquent that revocation is again being considered before probation can be revoked. *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

Order of Court Improper.

Where at a probation hearing on December 12, 1991, a special judge found beyond a reasonable doubt that the juvenile had violated the terms of probation, but where the judge did not revoke probation and fine appellant as could have been done, but instead, extended probation for an additional year, and where in addition the judge signed form order styled "Order to Appear," which had a checkmark in a box to notify appellant that the appellant was to appear on March 18, 1992, for "Review of compliance with Orders of this court," it was important for the trial court to revoke probation and fine the juvenile, when he appeared with counsel on March 18, 1992 pursuant to the "Order to Appear". *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

Order of Court Proper.

Court did not err in ordering both detention and inpatient drug treatment in juvenile's probation revocation order because the trial court did not amend its revocation order, but rather, entered an order of disposition on the revocation after finding that the juvenile violated the terms of her probation; at the time juvenile entered a plea of guilty, the trial court could have ordered detention and probation with the condition of receiving inpatient drug treatment. *K.N. v. State*, 360 Ark. 579, 203 S.W.3d 103 (2005).

Juvenile court properly revoked a juvenile's probation and committed him to the Department of Human Services, Division of Youth Services (DYS) because he did not challenge the evidence that he failed to obey the condition that he refrain from using alcohol, he cited no authority to support his contention that his disposition was unwarranted, and the juvenile court was statutorily authorized, upon finding the juvenile to be delinquent, to commit him to DHS upon revoking his probation. *C.C. v. State*, 2014 Ark. App. 262 (2014).

Order revoking defendant juvenile's probation was affirmed; there was testimony that defendant was not complying with the counseling condition of his probation, and while he offered an excuse, the trial judge was not required to believe him or excuse his failure to comply with probation conditions. *T. M. v. State*, 2014 Ark. App. 420, 439 S.W.3d 70 (2014).

Evidence was sufficient to support a decision to revoke probation for appellant, a juvenile, based on his failure to comply with the rules at a residential treatment facility; there was no testimony that a new medication regimen caused any negative change in appellant's behavior. The State produced evidence that appellant displayed increasingly violent and disruptive behavior that was attributed to appellant being "picked on," instead of being due to a change in medication. *J.J. v. State*, 2014 Ark. App. 611 (2014).

Trial court did not err when it revoked juvenile's probation after juvenile was found delinquent on a new third-degree battery charge. *T.R. v. State*, 2018 Ark. App. 328, 552 S.W.3d 452 (2018).

Petition to Revoke Probation.

This section provides that after an adjudication of delinquency, the court may

place a juvenile on probation; after a juvenile is placed on probation, the only method of revocation provided for is for the prosecuting attorney to file a petition to revoke probation. *Avery v. State*, 311 Ark. 391, 844 S.W.2d 364 (1993).

Defendant juvenile, relying on § 5-4-307, asserted the trial court lacked jurisdiction to revoke defendant's suspended sentence where the revocation petition was filed and heard outside the period of suspension, however, defendant's reliance

on criminal code provisions was misplaced because § 9-27-331(c)(1) provided that an order of probation would remain in effect for an indeterminate period not to exceed two years, defendant had not been released from probation, and the trial court had jurisdiction to revoke defendant's probation pursuant to this section. *Byrd v. State*, 84 Ark. App. 203, 138 S.W.3d 109 (2003).

Cited: *Eichelberger v. State*, 323 Ark. 551, 916 S.W.2d 109 (1996).

9-27-340. [Repealed.]

Publisher's Notes. This section, concerning voluntary relinquishment of custody, was repealed by Acts 2001, No. 1503,

§ 13. The section was derived from Acts 1985, No. 273, § 39. For current law, see §§ 9-27-353 and 9-34-201 et seq.

9-27-341. Termination of parental rights — Definition.

(a)(1)(A) This section shall be a remedy available only to the Department of Human Services or a court-appointed attorney ad litem.

(B) This section shall not be available for private litigants or other agencies.

(2)(A) This section shall be used only in cases in which the department is attempting to clear a juvenile for permanent placement by terminating the parental rights of a parent and putative parent based on the definition of "parent" and "putative father" under § 9-27-303.

(B) This section shall not be used to terminate the rights of a putative parent if a court of competent jurisdiction has previously determined under § 9-27-325 that the rights of the putative parent have not attached.

(3) The intent of this section is to provide permanency in a juvenile's life in all instances in which the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective.

(4) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision on whether it is in the best interest of the juvenile to terminate parental rights.

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

(B) This section does not require that a permanency planning hearing be held as a prerequisite to the filing of a petition to terminate parental rights or as a prerequisite to the court's considering a petition to terminate parental rights.

(2)(A) The petitioner shall serve the petition to terminate parental rights as required under Rule 5 of the Arkansas Rules of Civil Procedure, except:

(i) Service shall be made as required under Rule 4 of the Arkansas Rules of Civil Procedure if the:

(a) Parent was not served under Rule 4 of the Arkansas Rules of Civil Procedure at the initiation of the proceeding;

(b) Parent is not represented by an attorney; or

(c) Initiation of the proceeding was more than two (2) years ago; or

(ii) When the court orders service of the petition to terminate parental rights as required under Rule 4 of the Arkansas Rules of Civil Procedure.

(B) The petitioner shall check with the Putative Father Registry if the name or whereabouts of the putative father is unknown.

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(b) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the home of the noncustodial parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that prevented the child from safely being placed in the parent's home, the conditions have not been remedied by the parent.

(c) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

(b) To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

(c) Material support consists of either financial contributions or food, shelter, clothing, or other necessities when the contribution has been requested by the juvenile's custodian or ordered by a court of competent jurisdiction.

(d) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(ii)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(iii) The parent is not the biological parent of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the parent;

(iv) A parent has abandoned the juvenile;

(v)(a) A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval.

(b) If the consent is executed under oath by a person authorized to administer the oath, the parent is not required to execute the consent in the presence of the court unless required by federal law or federal regulations;

(vi)(a) The court has found the juvenile or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents or stepparent or stepparents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that placement of the juvenile in the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent the placement of the juvenile in the custody of the parent.

(b) The department shall make reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies.

(d) Subdivision (b)(3)(B)(vii)(a) of this section does not apply if the factors or issues have not been adjudicated by the court or the parent is not provided with proper notice of the factors or issues;

(viii) The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life;

(ix)(a) The parent is found by a court of competent jurisdiction, including the juvenile division of the circuit court, to:

(1) Have committed murder or manslaughter of any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit the murder or manslaughter;

(2) Have committed a felony battery that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery that results in serious bodily injury to any juvenile;

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) "Aggravated circumstances" means:

(i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification;

(ii) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months; or

(iii) A child or a sibling has been neglected or abused to the extent that the abuse or neglect could endanger the life of the child;

(4)(A) Have had his or her parental rights involuntarily terminated as to a child.

(B) It is an affirmative defense to the termination of parental rights based on a prior involuntary termination of parental rights that the parent has remedied the conditions that caused the prior involuntary termination of parental rights; or

(5) Have abandoned an infant, as defined in § 9-27-303.

(b) This subchapter does not require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed in subdivision (b)(3)(B)(ix)(a) of this section; or

(x) A putative parent has not established paternity or significant contacts with his or her child after:

(a) Being named and served as a party in a dependency-neglect proceeding; or

(b) Receiving notice of a dependency-neglect proceeding under § 9-27-311 or § 9-27-325.

(c)(1) An order terminating the relationship between parent and juvenile:

(A) Divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the right to withhold consent to adoption, except the right of the juvenile to inherit from the parent, that is terminated only by a final order of adoption; and

(B)(i) Divests a putative parent and the juvenile of all rights, powers, and obligations with respect to the putative parent and the juvenile if the rights of the putative parent have attached under § 9-27-325(n) before or during the termination proceeding.

(ii) The divesting of all the rights, powers, and obligations of the putative parent and the juvenile shall be based on the same author-

ity, requirements, limitations, and other provisions that apply to the termination of the rights of a parent, including without limitation the provision requiring the dismissal of a putative parent as a party to a case without further notice to the putative parent.

(2)(A) Termination of the relationship between a juvenile and one parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.

(B) A court may terminate the rights of one parent and not the other parent if the court finds that it is in the best interest of the child.

(3) An order terminating parental rights under this section:

(A) May authorize the department to consent to adoption of the juvenile; and

(B) Dismisses the parent or putative parent subject to the termination of parental rights as a party to the case without further notice to the parent or putative parent required.

(d)(1) The court shall conduct and complete a termination of parental rights hearing within ninety (90) days from the date the petition for termination of parental rights is filed unless continued for good cause as articulated in the written order of the court.

(2)(A) The court may continue a termination of parental rights hearing for up to one hundred eighty (180) days from the date the petition for termination of parental rights is filed in extraordinary circumstances.

(B) As used in this subdivision (d)(2), “extraordinary circumstances” includes without limitation the following circumstances:

(i) The Supreme Court orders the suspension of in-person court proceedings; and

(ii) One (1) of the following has occurred:

(a) The President of the United States has declared a national emergency; or

(b) The Governor has declared a state of emergency or a statewide public health emergency.

(e) A written order shall be filed by the court or by a party or party’s counsel as designated by the court within thirty (30) days of the date of the termination hearing or before the next hearing, whichever is sooner.

(f) After the termination of parental rights hearing, the court shall review the case at least every six (6) months, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(g)(1)(A) A parent may withdraw consent to termination of parental rights within ten (10) calendar days after it was signed by filing an affidavit with the circuit clerk in the county designated by the consent as the county in which the termination of parental rights will be filed.

(B) If the ten-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(C) No fee shall be charged for the filing of the affidavit.

(2) The consent to terminate parental rights shall state that the person has the right of withdrawal of consent and shall provide the address of the circuit clerk of the county in which the termination of parental rights will be filed.

(h) Upon the entry of an order terminating parental rights the:

(1) Department is relieved of all responsibility for providing reunification services to the parent whose parental rights are terminated;

(2) Appointed parent counsel is relieved of his or her representation of the parent whose parental rights are terminated except as provided under Rules 6-9 and 6-10 of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas;

(3) Appointed parent counsel shall be reappointed to represent a parent who successfully appeals the termination of his or her parental rights if the parent is indigent; and

(4) Parent whose parental rights are terminated is not entitled to:

(A) Notice of any court proceeding concerning the juvenile; and

(B) An opportunity to be heard in any court proceeding concerning the juvenile.

History. Acts 1989, No. 273, § 40; 1991, No. 557, § 1; 1995, No. 811, § 1; 1995, No. 909, § 1; 1995, No. 1335, § 7; 1995, No. 1337, § 10; 1997, No. 1227, § 13; 1999, No. 401, § 14; 1999, No. 1306, § 1; 2001, No. 1503, § 14; 2003, No. 1166, § 19; 2003, No. 1319, §§ 23, 24; 2005, No. 1990, § 18; 2007, No. 587, §§ 21-23; 2009, No. 956, §§ 20, 21; 2011, No. 792, § 10; 2011, No. 1175, § 9; 2013, No. 1055, §§ 11, 20; 2015, No. 1022, § 4; 2015, No. 1024, §§ 5, 6; 2017, No. 995, § 1; 2017, No. 1111, §§ 3, 4; 2019, No. 541, §§ 5-8; 2019, No. 985, §§ 1, 2; 2020, No. 144, § 41.

A.C.R.C. Notes. Acts 2020, No. 144, § 42, provided: "Retroactivity. Sections 39 through 41 of this act apply retroactively to cases that are pending as of the effective date of Sections 39 through 41 of this act."

Amendments. The 2015 amendment by No. 1022 redesignated (c)(2)(A)(i) as (c)(2)(A); deleted (c)(2)(A)(ii); redesignated (c)(2)(A)(iii) as (c)(2)(B); and deleted former (c)(2)(B).

The 2015 amendment by No. 1024 inserted present (b)(3)(B)(i)(b); redesignated former (b)(3)(B)(i)(b) as (b)(3)(B)(i)(c); and added (b)(3)(B)(ix)(a)(3)(B)(iii).

The 2017 amendment by No. 995 substituted "circuit court juvenile division" for "juvenile division of circuit court" in the introductory language of (b)(3)(B)(ix)(a); and deleted "sibling of the" preceding "child" in (b)(3)(B)(ix)(a)(4).

The 2017 amendment by No. 1111 added (b)(3)(B)(vii)(d); and added (h).

The 2019 amendment by No. 541 redesignated former (a)(2) as (a)(2)(A); in (a)(2)(A), added "by terminating the parental rights of a parent and putative parent based on the definition of 'parent' and 'putative father' under § 9-27-303"; added (a)(2)(B); in (b)(3)(B)(iii), substituted "The parent" for "The presumptive legal father" twice and substituted "the biological parent" for "the biological father"; added (b)(3)(B)(x); added (c)(1)(B); added (c)(3)(B); and made stylistic changes.

The 2019 amendment by No. 985 deleted (a)(4)(A); redesignated (a)(4)(B) as (a)(4); in (a)(4), inserted "on", deleted "juvenile's" preceding "best", and inserted "of the juvenile"; added the (b)(3)(B)(ix)(a)(4)(A) designation; and added (b)(3)(B)(ix)(a)(4)(B).

The 2020 amendment added (d)(2).

RESEARCH REFERENCES

Cross References. Placement of juveniles, preference for relative placement, § 9-27-355.

Preference to relative caregivers for child in foster care, § 9-28-105.

Reinstatement of parental rights, §

9-27-370.

Resumption of services, § 9-27-369.

Review of termination of parental rights, § 9-27-360.

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Parents' mental illness or mental deficiency as ground for termination of parental rights — General considerations. 113 A.L.R.5th 349.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Effect on parenting ability and parental rights. 116 A.L.R.5th 559.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Best interests analysis. 117 A.L.R.5th 349.

Parents' mental illness or mental deficiency as ground for termination of parental rights — Issues concerning guardian ad litem and counsel. 118 A.L.R.5th 561.

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Parents' mental illness or mental deficiency as ground for termination of parental rights — Issues concerning rehabilitative and reunification services. 12 A.L.R.6th 417.

Construction and Application by State

Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C. § 1912(d). 61 A.L.R.6th 521.

Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

Admissibility, Sufficiency, and Other Issues Concerning Expert Evidence to Prove or Disprove Shaken Baby Syndrome. 16 A.L.R.7th Art. 5 (2016).

Parents' Physical Illness or Physical Deficiency as Ground for Termination of Parental Rights — Applicability of Americans with Disabilities Act. 27 A.L.R.7th Art. 1 (2018).

Claims of Ineffective Counsel at Termination of Parental Rights Proceedings — Prehearing and Procedural Issues. 30 A.L.R.7th Art. 1 (2018).

Claims of Ineffective Counsel at Termination of Parental Rights Proceedings — Hearing and Post-Hearing Issues. 30 A.L.R.7th Art. 2 (2018).

Ark. L. Rev. Recent Developments, Domestic Relations — Termination of Parental Rights, 57 Ark. L. Rev. 1015.

Note, What About the Child?: A Critique of *Linker-Flores v. Arkansas Department of Human Services*, 60 Ark. L. Rev. 353.

U. Ark. Little Rock L.J. Survey — Family Law, 14 U. Ark. Little Rock L.J. 79.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 913.

Annual Survey of Case Law, Family Law, 28 U. Ark. Little Rock L. Rev. 744.

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In General.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992).

Subdivision (c)(1) of this section and § 9-9-215(a)(1) point to a public policy which, in determining what is in the child's best interest, favors a complete severing of the ties between a child and its biological family when he is placed for adoption. *Suster v. Ark. Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

The Department of Human Services was not required to have physical or legal custody of a child in order to proceed where an amendment to the statute which deleted such requirement took effect before the appellant's parental rights were actually terminated. *Moore v. Ark. Dep't of Human Servs.*, 333 Ark. 288, 969 S.W.2d 186 (1998).

The rights of natural parents are not to be passed over lightly, but these rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. Parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Baker v. Ark. Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

When the issue is one involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship; however, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Subsection (c) of this section clearly contemplates termination of only a single parent's parental rights. *Griffin v. Ark. Dep't of Health and Human Servs.*, 95 Ark. App. 322, 236 S.W.3d 570 (2006).

Purpose.

The purpose of this section is to provide permanency in a juvenile's life in all instances where return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that return to the family home cannot be accomplished in a reasonable period of time. *Thompson v. Ark. Dep't of Human Servs.*, 59 Ark. App. 141, 954 S.W.2d 292 (1997).

Order terminating a mother's parental rights to her two children was upheld as the children had been with a foster family for three years and such a delay went against the clear legislative intent of this section. *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

Intent behind the termination of parental rights statute is to provide permanency in a child's life when it is not possible to return the child to the family home because it is contrary to the child's health, safety, or welfare, and a return to the family home cannot be accomplished in a reasonable period of time as viewed from the child's perspective. *Everly v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 528, 589 S.W.3d 425 (2019).

Abandonment.

Trial court properly found that a mother had abandoned her child because she had not visited the child since 2011, she had not provided any documentation showing that she had obtained a psychological evaluation, that her name was on the lease to the home she lived in, or that she had provided financial assistance for the child, she had not begun parenting classes, had not provided a viable relative placement for the child, and had not held

a job for an extended period of time. *Knerr v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 550 (2014).

Trial court erred in terminating the father's parental rights based on abandonment because the father was in prison throughout the entirety of the proceeding, there was no evidence that he was served with the emergency order of custody, and the trial court's orders repeatedly found him to be in noncompliance with a case plan of which he had no knowledge. *Brinkley v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 625, 533 S.W.3d 639 (2017).

Termination of the father's parental rights based on subjecting the children to aggravated circumstances by abandoning them was proper because the father was aware that his children had been placed in foster care and adjudicated dependent-neglected; despite his knowledge of the proceedings, there was no proof of any contact with his children throughout the case either while he was incarcerated, while he was out on bond, after he had been released to the halfway house, or after he had returned to court for his originally scheduled termination hearing; and there was no evidence that the father took advantage of any opportunities to have contact with his children that would have been available to him in prison or in the halfway house. *Clark v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 243, 548 S.W.3d 216 (2018).

Court of Appeals affirmed the finding that the Department of Human Services proved the ground of abandonment because the evidence was sufficient to support a conclusion that the father failed to support or maintain regular contact with his child without just cause; by his own testimony, the father attended only three visits in 2017, and he admitted that he exercised three visits in January 2018 only after his lawyer told him it would look better for him. *Norris v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 571, 567 S.W.3d 861 (2018).

Evidence was sufficient to support the trial court's termination of the father's parental rights based on the statutory ground of abandonment because the father testified that he purposely avoided involvement in the case, he knew that the children were in the custody of the Department of Human Services and that legal proceedings were being pursued but

he chose not to participate, the children spent over one year in foster care and the father had no contact or visitation with them during that year, and the father's explanations for his absence were considered by the trial court and deemed unjustified. *Burns v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 253, 576 S.W.3d 505 (2019).

Although a mother testified that she moved to Arizona where she had family to help overcome her drug addiction and had been sober for six months, appellate counsel's no-merit motion to withdraw was granted and termination of parental rights was affirmed on the abandonment ground because the mother chose to move to another state, ceased contact with the Department of Human Services, did not return to Arkansas to attend any hearings, and had not seen the two-year-old child in over a year at the time of the termination hearing; in addition, the mother had recently married a paroled felon, and returning the child to her in Arizona, where there were so many "unknowns", would subject the child to potential harm. *Meisch v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 283, 577 S.W.3d 444 (2019).

Adoptability.

Where the five-month-old child was removed from the home after suffering non-accidental trauma consistent with shaken baby syndrome, the father's parental rights were properly terminated; adoptability was but one factor to consider and the trial court specifically stated that the children were adoptable, notwithstanding any disabilities. *McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005).

Clear and convincing evidence supported a best-interest finding as to the adoptability of a mother's children in a parental rights termination proceeding: the children's caseworker, an adoption specialist, and a case manager with a developmental-disabilities program all testified that all three children were adoptable. This section did not require that the Department of Human Services present proof that there were potential adoptive parents for these particular children. *Henson v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 697 (2009).

In a termination of parental rights case, the trial court failed to hear evidence or

make findings regarding the children's adoptability as required by this section. Therefore, its order terminating the father's rights was reversed. *Haynes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 28 (2010).

In granting a petition to terminate a mother's parental rights to two children, a trial court properly conducted a best-interest analysis under subdivision (b)(3)(A) of this section and found that the likelihood that the children would be adopted was very high as the Department of Human Services had an adoptive home for the children. *Clingenpeel v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 84, 381 S.W.3d 107 (2011).

In a termination of parental rights proceeding pursuant to this section, the trial court did not err in finding that the father's children were adoptable as the trial court had evidence from a Department of Human Services caseworker that in her opinion, the children were adoptable and that there was at least one prospective family for some of the children. *Woodall v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 247 (2011).

There was no error in the finding that there was clear and convincing evidence of facts warranting the termination of parental rights because the circuit court was presented with evidence containing direct statements from the potential adoptive parents that they wanted to adopt the children and neither subdivision (b)(3) of this section nor case law, required any specific quantum of evidence. *Renfro v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 419, 385 S.W.3d 285 (2011).

Order terminating appellant's parental rights to her children was affirmed because the trial court had evidence with which to consider the likelihood of the children's adoption and made a finding that they were likely to be adopted; the adoption specialist stated that she had been able to find adoptive parents for sibling groups. *Bayron v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 75, 388 S.W.3d 482 (2012).

Termination of a father's parental rights to his children was affirmed because, despite the father's contention that there was a complete lack of evidence that the children were adoptable, the children's caseworker, who had worked on the case for over a year after its inception,

testified at the termination hearing that the children were adoptable, and the testimony from a caseworker or an adoption specialist that children were adoptable was alone sufficient to meet the clear and convincing standard to establish the children's adoptability. *Thompson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 124 (2012).

In a termination of parental rights case under this section, a trial court properly considered adoption evidence in determining whether termination was in the children's best interest; testimony from an adoption specialist that two children were adoptable was sufficient. A mother contended that the evidence of adoptability was not sufficient, but the adoption specialist stated that a family had already inquired about adopting the children. *Lowery v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 478 (2012).

Because the Department of Human Services, the CASA worker, the children's therapist, and the trial court believed that the children were adoptable and that the grandmother had stated that she intended to adopt them, the record demonstrated that the trial court considered the likelihood of adoption as part of its best-interest analysis in terminating the mother's and the father's parental rights. *Smith v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 753, 431 S.W.3d 364 (2013).

In a termination of parental rights case, no error was shown because adoptability was but one factor to be considered in the best interest analysis; evidence was presented by a caseworker, an adoption specialist, and a volunteer that a child was adoptable. *Stockstill v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 427, 439 S.W.3d 95 (2014).

In a parental rights termination case, there was no evidence regarding adoptability of the father's two oldest children, and the circuit court made no finding concerning this lack of evidence; accordingly, the circuit court clearly erred when it found that termination of the father's parental rights to his two oldest children was in their best interest. *Williams v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 481 (2014).

Under prior cases, the circuit court's best-interest analysis will be insufficient unless there is some evidence regarding adoptability or the court explains why

termination of parental rights is in the best interest of the children regardless of their adoptability. *Brown v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 725, 478 S.W.3d 272 (2015).

Although a father argued that the trial court erred in finding that termination of his parental rights was in his child's best interest due to a complete lack of credible evidence demonstrating the likelihood of adoptability and potential harm, the appellate court noted that there was evidence presented to the trial court to consider in determining the child's adoptability. The caseworker did not make a blanket statement that all children were adoptable, instead concentrating on the child's specific circumstances and needs in giving her opinion that the father's child was adoptable. *Caldwell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 144, 484 S.W.3d 719 (2016).

Termination of parental rights as to one of a parent's children was appropriate because the court's finding of adoptability in regard to the best interest analysis for that child was not clearly erroneous; the record contained the foster parent's testimony that the foster parent and their spouse wished to adopt the child. However, reversal and remand was appropriate as to the parent's other child because the record indicated no evidence about adoptability of the child and the court made no finding that such evidence would not have mattered. *Miller v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 239, 492 S.W.3d 113 (2016).

Circuit court properly terminated a father's parental rights to his child; while the court's order erroneously relied on the testimony of a nonexistent witness, there was direct testimony on that issue from the child's foster mother, who testified that she and her husband wanted to adopt the child, there was no requirement that an adoptive home be approved and available for the child at the time of the termination hearing, this section required consideration of whether the child was adoptable, and a prospective parent's interest in adopting the child indicated adoptability. *Miller v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 249, 491 S.W.3d 164 (2016).

Trial court clearly erred in finding that termination of a mother's parental rights was in the children's best interest where

the only evidence supporting the finding that the children were adoptable was one child's testimony that she wanted her mother's rights terminated and her foster parents to adopt her, and that evidence did not speak to the likelihood that the children would be adopted. *Kerr v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 271, 493 S.W.3d 342 (2016).

Termination of the mother's parental rights was in the children's best interest as the caseworker's testimony that the children were adoptable was sufficient to support an adoptability finding because the caseworker specifically testified that there were no known medical or physical barriers to adoption, and that the children's young ages made them even more adoptable. *Duckery v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 358 (2016).

Conclusion that terminating the father's parental rights was in the child's best interest was not clearly erroneous; although no witness testified that the child was adoptable or that there was a likelihood of adoption, the circuit court did what it was statutorily required to do: consider the likelihood that the child would be adopted, and while the father might have been able to care for the child if he remained sober, the circuit court could have found that the child's need for permanency through adoption outweighed the father's need for time to become a fit parent. *Sharks v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 435, 502 S.W.3d 569 (2016).

Caseworker testified that although the child was "pretty severely developmentally delayed", she saw no barriers to his adoption because his developmental delays were not so severe as to prevent some other family from loving him; her testimony was not self-contradictory, and in any event, the fact that a child has developmental delays did not negate a finding that a child was adoptable, and the adoptability finding was supported by the evidence. *Jackson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 440, 503 S.W.3d 122 (2016).

For best interest purposes, the trial court's consideration of the likelihood of the child being adopted was underpinned by adequate evidence; the caseworker did rely on her professional experience, but she also testified to the child's particular characteristics, her youth being a distinct

advantage, and that her current placement had expressed interest in adopting her. *Bell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 446, 503 S.W.3d 112 (2016).

There was sufficient evidence to support the trial court's finding that there was a likelihood that the children would be adopted because the former caseworker testified that the children were adoptable and multiple witnesses testified to the children's emotional capabilities and characteristics, which informed adoptability. *Stanley v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 581, 507 S.W.3d 544 (2016).

Termination of the mother's parental rights to five of her six children was in the children's best interests because the trial court considered evidence regarding the children's adoptability and concluded that the adoption specialist for the Department of Human Services (DHS) indicated that each child had the potential for adoption and that there were no significant barriers to adoption of any child; DHS was not required to prove adoptability by clear and convincing evidence as the trial court merely had to consider the evidence of adoptability presented; and setting the bar higher would unfairly punish children with special needs or developmental disabilities who needed permanency. *Solee v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 640, 535 S.W.3d 687 (2017).

Trial court erred in finding that termination of a father's parental rights was in the children's best interest where it found that the children were adoptable even though there was no evidence of adoptability in the record, and there was no finding that the absence of evidence of adoptability made "no legal difference" to the ultimate decision of what was in the children's best interest. *Simon v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 327, 551 S.W.3d 425 (2018).

Circuit court did not err in finding all three children adoptable; although the court stated that the children had no special medical or behavioral needs that prevented them from being adopted, it followed that statement with an acknowledgement that one child was still in therapeutic foster care and another had behavioral issues, and thus those two children's specific circumstances were considered.

Day v. Ark. Dep't of Human Servs., 2018 Ark. App. 492, 562 S.W.3d 871 (2018).

Adoptability is not an essential element in a termination case; rather, it is merely a factor that must be considered by the circuit court in determining the best interest of the child. There is no requirement that an adoption specialist testify at the termination hearing. Evidence that adoptive parents have been found is not required, and neither is evidence that proves the child will be adopted. *Atwood v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 448, 588 S.W.3d 48 (2019).

Adoption Subsidies.

Administrative law judge erred in finding that children were not in the state's custody for adoption subsidy purposes because, although the children were in their aunt's physical custody, the state maintained a supervisory role over the children through the context of the protective-services case that remained open on the children until their parents' rights were terminated. *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

Aggravated Circumstances.

Termination of parental rights was appropriate where juveniles were subjected to aggravated circumstances involving sexual abuse and extreme and repeated cruelty. The trial court found that, while not as likely as the adoption of his sister, there was a likelihood that the brother would be adopted once he was stable. Since there was no appeal from the aggravated circumstances decision, there was no need to address the alternate ground for termination, which was based on the parents' 25- and 35-year sentences in criminal cases. *Bowman v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 477 (2012).

There was sufficient evidence to support the termination of a mother's parental rights because she had subjected the children to aggravating circumstances since there was little likelihood of reunification. *Inter alia*, the mother failed to comply with the case plan, had a long history of alcohol abuse, and could not provide a suitable and safe home for the children. *Mitchell v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 715, 430 S.W.3d 851 (2013).

Termination of the father's parental rights was affirmed based on the finding of

aggravated circumstances, given that there was clear evidence that reunification services were unlikely to succeed; the father never fully complied with the case plan, he did not understand the significance of his violent tendencies, and the results of his psychological evaluation and his therapist's testimony supported the finding that further services would not likely help the father and termination was necessary to protect the child. *Weathers v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 142, 433 S.W.3d 271 (2014).

Termination of a parent's parental rights, based on the statutory ground of aggravated circumstances was appropriate because the parent did not have regular visits with the children after they came into care and the circuit court found little likelihood that services to the family would result in successful reunification. *Dornan v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 355 (2014).

Trial court's finding that the Department of Human Services proved that the mother had subjected a juvenile to aggravated circumstances was not clearly erroneous, as the evidence showed that the child sustained a subdural hematoma, bruising, and bite marks while in the mother's custody. *Warren v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 469, 441 S.W.3d 72 (2014).

Circuit court properly terminated the parents' parental rights because the child was adoptable and returning him to their custody could cause potential harm where they did not have stable housing, the child had spent more than three of his nine years in foster care, there was physical abuse and educational neglect, the parents were unable to permanently correct the conditions causing the removal, and additional services would not result in a successful reunification. *Chapman v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 525, 443 S.W.3d 564 (2014).

Circuit court properly found that it was in a child's best interest to terminate the father's parental rights because the circuit court did not err in finding that other factors arose after commencement of the case, the father demonstrated an incapacity and indifference to remedy those issues, the father also subjected the child to aggravated circumstances by his arrests, his failures to regularly take his medications, attend counseling, and maintain

stable housing, and the child was adoptable. *Samuels v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 527, 443 S.W.3d 599 (2014).

There was a finding of aggravated circumstances in this case, as the trial court found that the child had been abandoned and the mother failed to adequately address the issues, and the findings clearly set out the reasons why there was little likelihood that any further services would result in successful reunification; the appeal was deemed wholly without merit. *Jones v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 717 (2014).

Mother's parental rights were terminated for abandonment under this section where there was little likelihood that the services would have resulted in a successful reunification based on the mother's lack of visitation or participation in court-ordered services. The mother's abandonment of the children demonstrated aggravated circumstances. *Johnson v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 34 (2015).

Termination of parental rights to the parent's youngest children was appropriate on the statutory ground of aggravated circumstances because (1) the circuit court did not err in considering the parent's previous dependency case regarding the parent's children; (2) one of the parent's older children testified as to abuse and neglect in the parent's home; and (3) the court also considered the parent's ongoing drug use and failure to follow the court's order regarding prescription-drug use and residential treatment. *McKinley v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 475, 471 S.W.3d 209 (2015).

Termination of the mother's parental rights was proper and her due process rights were not violated; in the July 2014 petition, the mother was given notice reasonably calculated to inform her as to what reasons the Department of Human Services was alleging to terminate her parental rights based on aggravated circumstances under subdivision (b)(3)(B)(ix) of this section. There is no requirement that a no reunification finding be made prior to filing the petition to terminate parental rights — only that a determination "has been or is made" by a judge; and the trial judge made that finding in a hearing held in August 2014, which relieved the department of provid-

ing further reunification services. *Smithee v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 506, 471 S.W.3d 227 (2015).

Trial court committed no error in finding that the mother had subjected her children to aggravated circumstances; the reason the children were removed from the home was because of sexual abuse committed against the oldest child by the mother's husband, but despite all the evidence of abuse, the mother refused to believe that anything inappropriate had occurred. Given the mother's denial of the abuse and her disregard of the oldest child's well-being, the trial court correctly determined that the mother's failure to protect her children would continue if the children were returned to her. *Miller v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 727, 479 S.W.3d 63 (2015).

Trial court properly terminated a mother's parental rights because there was no clear error in its finding that the mother subjected her children to aggravated circumstances; the mother failed to protect her children from the father's sexual abuse, and she admitted to knowingly engaging in sex acts in front of the children, which was sexual abuse under Arkansas law. *Geatches v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 344, 498 S.W.3d 326 (2016).

Sufficient evidence supported an aggravated circumstances ground for termination of a father's parental rights because (1) the father's children were removed at least three times for environmental issues, and (2) the father only recently began counseling and realized a need for a better home. *Murphey v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 430, 502 S.W.3d 544 (2016).

Sufficient evidence supported an aggravated circumstances ground for termination of a mother's parental rights because (1) the children were removed from the mother three times for environmental issues, and (2) the mother was in jail and had no home to return to when released. *Murphey v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 430, 502 S.W.3d 544 (2016).

Trial court did not err in terminating a mother's parental rights where the Department of Human Services provided appropriate reunification services to her, including services directed toward

improving her mental health, the evidence showed that she was unable or unwilling to recognize that she suffered from mental illness, and given the repeated failures to remedy the problems, it was not error to find that there was little likelihood that services to the mother would result in successful reunification. *Dade v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 443, 503 S.W.3d 96 (2016).

Evidence was sufficient to support the aggravated circumstances ground for termination of parental rights given the child's testimony about daily beatings with a stick or belt as well as other evidence. *Rodgers v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 569, 506 S.W.3d 907 (2016).

Circuit court's finding of aggravated circumstances was supported by the evidence; although the Department of Human Services failed to arrange visitation, it had made services available to the father for well over a year, and the father had not made even minimal progress toward remedying his circumstances, had failed every drug screening, and failed to attend any hearing. *Shawkey v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 2, 510 S.W.3d 803 (2017).

Trial court's decision to terminate parental rights on the aggravated circumstances/little likelihood of reunification ground was not clearly erroneous where a caseworker testified about the numerous services provided throughout the case, and despite those services, the parents at no point showed they could consistently maintain a sanitary and safe household for four small children. *Bean v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 77, 513 S.W.3d 859 (2017).

Termination of the father's parental rights was proper based on the court's finding of aggravated circumstances because, at the time of the termination hearing, the father had been in a drug-treatment program for one week and had four or five weeks remaining, but he had unsuccessfully attempted treatment twice before; he had not seen his children since May 2016, had not had steady employment or housing since the children had been in the custody of the Department of Human Services, and was on probation for assaulting the children's mother and possessing drug paraphernalia. *Canada v.*

Ark. Dep't of Human Servs., 2017 Ark. App. 476, 528 S.W.3d 874 (2017).

Circuit court's finding that aggravated circumstances supported termination of a mother's parental rights was upheld where the mother had not appealed the adjudication order in which the court had made that finding. *Whitaker v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 61, 540 S.W.3d 719 (2018).

Aggravated-circumstances ground supported termination because the parents, after receiving services, did not address their anger problems; the parents had violent altercations with a caseworker, the father was arrested for disorderly conduct and assault, the mother was arrested for disorderly conduct, the parents' aggressive behavior was observed during visitations, and the court observed the parents' volatile temperament in the courtroom. The parents also failed to complete parenting-without-violence classes that were in the case plan. *Nichols v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 85, 542 S.W.3d 197 (2018).

Termination of the mother's parental rights based on aggravated circumstances was affirmed where she had failed to protect the children from the father's physical abuse, even after their initial removal and return, she expressed no worries about the father's anger issues, and it was clear that she was not convinced that the father had hurt the children after their return. *Bonner v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 142, 544 S.W.3d 90 (2018).

Given the fact that the father was incarcerated for the majority of the case and had demonstrated sustained criminal misconduct indicative of an impediment to reunification with his children, termination of his parental rights based on the trial court's finding of aggravated circumstances was proper. *Kohlman v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 164, 544 S.W.3d 595 (2018).

Although the father argued that he was never offered meaningful services, a finding of aggravated circumstances did not require the Department of Human Services to prove that meaningful services were provided, and in light of the father's persistent criminal misconduct, the proof supported the conclusion that there was little likelihood that services would result in successful reunification. *Kohlman v.*

Ark. Dep't of Human Servs., 2018 Ark. App. 164, 544 S.W.3d 595 (2018).

Because the mother did not appeal the prior aggravated-circumstances findings in adjudication and permanency-planning orders, there was no meritorious appellate challenge to the aggravated-circumstances statutory ground that was used to terminate her parental rights; thus, the appeal was frivolous and counsel's motion to withdraw was granted. *Roland v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 333, 552 S.W.3d 443 (2018).

Trial court properly terminated a father's parental rights on the ground of aggravated circumstances; it was doubtful whether additional counseling could have benefited him given that he missed almost as many mental-health counseling sessions as he attended, was resistant during sessions, and stated that he did not want or need counseling. *Scott v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 347, 552 S.W.3d 463 (2018).

Circuit court's decision to terminate a mother's parental rights based on aggravated circumstances was not clearly erroneous because the Department of Human Services had been providing services for 20 months at the time of the termination hearing, the mother drank alcohol in violation of a court order, and the children's foster mother testified about concerning behaviors that arose after the children had contact with the mother. *McHenry v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 368, 553 S.W.3d 771 (2018).

Termination of the mother's parental rights was proper as the mother subjected the child to aggravated circumstances, meaning there was little likelihood that services to the family would result in successful reunification, because the mother had spent a great portion of time during the case in jail; she continued to use illegal drugs; she conceded at the termination hearing that she had a drug problem and needed help, yet she did not complete intensive outpatient drug treatment, did not complete counseling, and did not complete parenting classes; and, when provided 57 opportunities to visit the child, she visited the child only 14 times. *Murphy v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 426, 560 S.W.3d 465 (2018).

Mother unsuccessfully argued that the circuit court erred in finding that the

Department of Human Services (DHS) had provided meaningful services throughout the case; a finding of aggravated circumstances does not require that DHS prove that meaningful services toward reunification were provided. *Guaradado v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 16, 568 S.W.3d 296 (2019).

Termination of the mother's parental rights was proper based on the aggravated circumstances ground as there was little likelihood that services to the mother would result in a successful reunification because a Department of Human Services (DHS) foster-care and protective-services supervisor testified that the mother failed to learn how to parent, she lacked the mental capacity to watch all three of her children at the same time, and the children were able to wander away from her without her knowledge; and a DHS program assistant stated that, in 22 of 43 visits she supervised, the mother would lose one of her three children. *Barton v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 239, 576 S.W.3d 59 (2019).

Termination of the mother's parental rights was proper under the aggravated circumstances ground because she refused to believe that the eldest child was sexually abused and she failed to keep her children away from her husband after the eldest child's allegation was found to be true; and while the mother and her husband were separated and she had filed for divorce, the separation had occurred only months earlier and more than a year after the eldest child's allegation of abuse. *Drane v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 256, 576 S.W.3d 550 (2019).

Termination of the mother's parental rights was proper based on the aggravated-circumstances ground as there was ample evidence of the mother's persistent instability because she lived in 11 places, had eight jobs, and owned six vehicles, and she admitted that there were times she was unemployed during the case, lacked transportation, and did not have a valid driver's license; and there was little likelihood that further services would result in reunification because she failed to attend counseling, regularly take her medication, and take her children to counseling. *Wright v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 263, 576 S.W.3d 537 (2019).

Termination of a father's parental rights on the ground of aggravated circumstances was appropriate because there was little likelihood that services to the father would have resulted in successful reunification as the father, who had a persistent and unresolved addiction to drugs, did not complete recommended drug counseling and did not have a sponsor. Furthermore, the father failed to maintain stable housing or employment, was driving without a license, and was at risk of having his parole revoked due to pending drug charges (no-merit brief). *Kloss v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 389, 585 S.W.3d 725 (2019).

Circuit court did not clearly err in finding that the evidence proved the aggravated circumstances ground for termination of the mother's parental rights; she did nothing to address her drug addiction following her completion of drug treatment, her home was unsuitable, and she was not making enough money to support a family. *Hampton v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 497, 588 S.W.3d 763 (2019).

Termination of a mother's parental rights on the ground of aggravated circumstances was appropriate because the circuit court found that the mother was not capable of caring for the children and that there was little likelihood further services would result in successful reunification. The mother had a long history with the Department of Human Services, the mother's visits with the children had not gone well, the mother's employment was not stable, and the mother continued to have contact with the man who had choked her. *Salinas v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 272, 599 S.W.3d 728 (2020).

Termination of the father's parental rights under the aggravated circumstances ground was proper because the Department of Human Services did not need to prove that meaningful services toward reunification were provided upon a finding of aggravated circumstances, and the proof supported the circuit court's finding that there was little likelihood that services would result in successful reunification between the father and his children; the father was aware there was a case plan that required him to do certain things to have the children returned to him, but he did not do those things; and

the father's continued criminal misconduct and incarceration for the majority of the case were indicative of an impediment to reunification. *Cloninger v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 282 (2020).

Alternative Findings.

Order provided that appellant was not one to whom any parental rights ever attached, and remaining findings were intended to be alternative and applicable only in the event of the reversal of the determination that appellant had no parental rights, which did not materialize; to the extent that the order might be read as an involuntary termination of appellant's rights, the order was modified to make clear that it was not to be read in that manner, and because no parental rights existed to be terminated, no such termination occurred. *Manken v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 100, 483 S.W.3d 834 (2016).

Americans with Disabilities Act.

Parent failed to demonstrate that her rights pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12132, were violated when she was denied visitation with her child and her parental rights were terminated, where parent was not denied any services on the basis of her mental disability, but denial of visitation and termination of parental rights was based solely on the best interests of the child. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

At no point did attorneys for the mother raise the Americans with Disabilities Act accommodations argument, and the trial court did not ignore the mother's mental deficiencies, but specifically acknowledged them and appointed an attorney ad litem in addition to appointed counsel; the trial court did not act in a manner that flagrantly prejudiced the mother so as to have justified the appellate court in applying the third exception to the contemporaneous-objection requirement. *Weathers v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 142, 433 S.W.3d 271 (2014).

Appeal.

In a termination of parental rights appeal, under Ark. Sup. Ct. & Ct. App. R. 3-1 and 3-2, the "entire record" could be properly prepared and transmitted by the circuit clerk without including the case plan, even though the plan had in fact been filed

in accordance with § 9-27-402; it was the mother's burden to bring up an adequate record for review and, because the record omitted the case plan, the court could not review the mother's due process claim. *Rodriguez v. Ark. Dep't of Human Servs.*, 360 Ark. 180, 200 S.W.3d 431 (2004).

Father's motion to file a belated appeal of an order terminating his parental rights was granted as the failure of father's counsel to inform him that he had the right to appeal the order was a good reason to grant the motion. *Flannery v. Ark. Dep't of Health & Human Servs.*, 368 Ark. 31, 242 S.W.3d 619 (2006).

In an appeal from a termination of parental rights proceeding in which the mother's counsel filed a no-merit brief pursuant to the Linker-Flores decision and Ark. Sup. Ct. & Ct. App. R. 6-9(i), there had been full compliance with Rule 6-9(i) and the appeal was without merit. The appellate court determined that the trial court's order to terminate the mother's parental rights was not clearly erroneous, and the mother's counsel discussed the other rulings made by the trial court and explained why they would not support a meritorious appeal. *Gossett v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 240, 374 S.W.3d 205 (2010).

Because a mother whose parental rights were terminated failed to preserve her claims and did not appeal the prior orders finding reasonable efforts by the Department of Human Services, she waived those claims for purposes of appeal; and even absent waiver, the claims would have failed on the merits because the circuit court did not clearly err in finding that the department made meaningful efforts and offered appropriate family services. *Kelley v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 481 (2011).

Mother's appeal of an order terminating her parental rights to her child was dismissed because she failed to appeal from an earlier order terminating her parental rights based on her consent under subdivision (b)(3)(B)(v)(a) of this section. *Faas v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 666 (2011).

Termination of the mother's parental rights to her three children was affirmed because the mother did not argue that the statutory grounds supporting termination of her parental rights were not proved by clear and convincing evidence and the

appellate court would not address arguments raised for the first time on appeal. *Andrews v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 22, 388 S.W.3d 63 (2012).

Counsel met the requirements for no-merit parental rights termination cases, and the court affirmed the termination and granted counsel's motion to be relieved from representation. *Smart v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 257 (2013).

Because counsel did not address the other factors ground for terminating the father's parental rights in his appellate brief, and because counsel addressed only the substantial-period-of-incarceration ground in a most cursory and unsatisfactory fashion, counsel's discussion did not meet the requirements of a no-merit appeal in a termination of parental rights case; because counsel failed to adequately explain why there was clear and convincing evidence of at least one ground to support termination of the father's parental rights, counsel was required to rebrief the appeal. *Washington v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 13 (2014).

Mother's parental rights were properly terminated for neglect and failure to correct the conditions that caused removal of her children, and the mother's counsel complied with the requirements for a no-merit parental-rights-termination appeal; while the mother was provided a copy of her counsel's brief and motion and was given an opportunity to file pro se points, she declined to do so. *Castillo-Chavez v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 76 (2014).

There could be no challenge to the statutory grounds of aggravated circumstances because this finding was made by the trial court in its adjudication order, which was not appealed. *Willingham v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 568 (2014).

Parents' claim that they received ineffective assistance of counsel, which ultimately led to the termination of their parental rights, was not reviewed on appeal where they did not develop their claims or present evidence or testimony regarding the ineffectiveness, and the trial court did not rule on the issue. *Taffner v. Ark. Dep't of Human Servs.*, 2016 Ark. 231, 493 S.W.3d 319 (2016), cert. denied, — U.S. —, 137 S. Ct. 687, 196 L. Ed. 2d 566 (2017).

Sufficient evidence supported an abuse finding where the findings regarding suspected abuse were litigated and determined at the dependency-neglect adjudication hearing, and no appeal of that order was filed. Even though the record on appeal includes the orders from all of the prior hearings, the appellate court is precluded from reviewing any adverse rulings from these portions of the record that were not appealed. *Ekberg v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 103, 513 S.W.3d 307 (2017).

Appellate Review.

Even in a case involving termination of parental rights where constitutional issues are argued, the appellate court will not consider arguments made for the first time on appeal; therefore, the judgment terminating the father's parental rights was affirmed. *Myers v. Ark. Dep't of Human Servs.*, 91 Ark. App. 53, 208 S.W.3d 241 (2005).

Father argued for reversal of the termination of his parental rights because he had no notice of one ground, but given that the court could affirm a termination decision on any ground alleged in the petition and proven, the appellate court considered the other statutory ground that had been pleaded. *Johnson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 412, 501 S.W.3d 391 (2016).

Although the mother developed some testimony at the termination of parental rights hearing that she had not been assessed for intellectual disabilities, she never argued that the department's failure in this respect should have precluded termination of her parental rights; as the circuit court made no ruling on the argument the mother raised on appeal, it was not preserved for appellate review. *Thomas v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 355, 553 S.W.3d 175 (2018).

Mother whose parental rights were terminated did not specifically attack either the potential-harm or adoptability aspect of the circuit court's best-interest finding, and thus the argument was considered abandoned. *Thomas v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 355, 553 S.W.3d 175 (2018).

Applicability of Amendments.

Appellate court did not apply the changes in the law that occurred after the

termination of parental rights order had been entered but before the appeal of the order was decided (Acts 2019, No. 541, for example, had amended this section to add subdivision (b)(3)(B)(x)). *Terry v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 591, 591 S.W.3d 824 (2019).

Availability of Remedy.

Termination of parental rights is a remedy available only to the Department of Human Services (DHS) (and to a guardian ad litem beginning in 1997) and not to private litigants; therefore, the right of dismissal accrues to DHS as the petitioner, and not to a parent. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997).

Subsection (a) of this section does not require that termination of parental rights be a predicate to permanent placement, but only that the Department of Human Services be attempting to clear the juvenile for permanent placement when parental rights are terminated. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997).

In a proceeding seeking to set aside a prior divorce decree adjudicating a purported father the legal parent of a minor child, a trial court lacked authority to terminate the father's parental rights because the action was not filed by an attorney ad litem or the Department of Human Services. *Hudson v. Kyle*, 352 Ark. 346, 101 S.W.3d 202 (2003).

Best Interest of Juvenile.

Trial court's finding that termination of the parental rights of a mother and a father under this section was in the child's best interest was clearly erroneous as there was no evidence that either parent had ever physically abused or harmed the child or were a threat to do so in the future. While time was of the essence in most termination proceedings, it was markedly less so in this case given the fact that the child lived with his maternal grandparents, and the grandmother expressly stated her desire that the child have continued contact with his parents. *Cranford v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 211, 378 S.W.3d 851 (2011).

Subdivision (b)(3)(A) of this section required consideration of whether the termination of parental rights was in a child's best interest, which consideration

had to include consideration of the likelihood that the child would be adopted, but such likelihood did not have to be established by clear and convincing evidence. Since one of the caseworkers testified that the mother's daughter was adoptable by someone who could handle her needs, there was some evidence of adoptability, and even so, limited evidence of adoptability made no legal difference given the clear potential harm of returning custody of the child to the mother, who, according to the evidence, could not provide the stable environment needed by her child. *Dority v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 295 (2011).

Termination of the mother's parental rights was proper pursuant to subdivisions (b)(3)(B)(ix)(a)(3)(B)(i) of this section because there was little likelihood that services to the family would result in successful reunification. Additionally, termination was in the children's best interest under subdivision (b)(3)(A) because there was a proper permanency plan for the children and the mother failed to maintain stable housing. *Baker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 400 (2011).

Because the children were dependent-neglected by virtue of neglect and inadequate supervision, and because neither parent had achieved a degree of stability that would permit the safe return of the children, termination of their parental rights under subdivision (b)(3) of this section was in the children's best interest. *Tucker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 430, 389 S.W.3d 1 (2011).

Termination of a father's parental rights was in the children's best interest because the father had not demonstrated his ability to remain sober in an unstructured environment for a significant time period, and his disability benefits were inadequate to provide a home and all other necessities for his children. Although the father did make commendable progress in attaining sobriety, he did not demonstrate similar progress in achieving sufficient mental health and stability to be a parent to his children. *Jessup v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 463, 385 S.W.3d 304 (2011).

Termination of a mother's parental rights was in the children's best interest because the children had been out of the mother's care for over 12 months, and she

had failed to remedy the conditions that had caused them to be removed from her custody. The mother moved in with a man with a lengthy criminal history, and she utterly failed to remedy her drug problems, having tested positive for every drug screen. *Jessup v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 463, 385 S.W.3d 304 (2011).

Clear and convincing evidence supported a trial court determination that termination of parental rights was in the best interests of the children under this section, as the parents did not show that they could consistently provide the children much-needed stability. *Christian-Holderfield v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 534, 378 S.W.3d 916 (2011).

Evidence supported a trial court's determination that termination of parental rights was in a child's best interests, as the grounds for such relief under subdivision (b)(3)(B)(i)(a) of this section were met, and the court found that returning the child to his mother had the potential for unhealthy circumstances and harm. *Cariker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 574, 385 S.W.3d 859 (2011).

Termination of the mother's parental rights to her three children was affirmed because there was sufficient testimony presented on the issue of adoptability and there was evidence presented to establish potential harm to the children if returned to their mother; the mother was found to have subjected the children to aggravated circumstances due to their residence in a drug premises and her involvement in criminal activity. *Threadgill v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 642, 386 S.W.3d 543 (2011).

Order terminating the father's parental rights to his daughter was reversed because there was no evidence that any harm or real risk of potential harm was introduced into the child's life by the father's slight lapses in judgment, or that her best interests would be served by having her father permanently and irrevocably removed from her life. *Rhine v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 649, 386 S.W.3d 577 (2011).

It was not clearly erroneous for a trial court to find that termination of parental rights was in children's best interest, under subdivision (b)(3)(A) of this section,

because (1) the mother whose parental rights were terminated waived any objection to the admissibility of testimony supporting the finding, and (2) the court expressly considered statutorily mandated factors. *Brabon v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 2, 388 S.W.3d 69 (2012).

Termination of the mother's parental rights to her son was affirmed because the circuit court's focus was appropriately on the child's best interests and the risk posed to the child in this case, should the mother's mental illnesses manifest, was not merely a risk of injury, but of death. *Rossie-Fonner v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 29, 388 S.W.3d 38 (2012).

Trial court did not err in terminating a mother's parental rights to her child on the ground that termination was in the child's best interest under subdivision (b)(3) of this section because the mother failed to accept any meaningful responsibility for the physical abuse that the child was forced to suffer at the hand of her boyfriend; she failed to demonstrate that she could protect and care for her child. *Cole v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 203, 394 S.W.3d 318 (2012).

Under this section, terminating the father's parental rights was in the best interest of the child because the father was unable to obtain and maintain stable and appropriate housing, employment, income, and transportation; the autistic child had significant special needs; and the child had progressed well while in the foster mother's care. *Hall v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 245, 413 S.W.3d 542 (2012).

Termination of a father's parental rights was appropriate because a trial court relied upon the record in making its decision, pursuant to this section; even though the father had made some progress and had partially completed a case plan, he failed to complete drug rehabilitation or achieve sufficient stability to parent the child. The father had been given a reasonable opportunity to achieve the required goals, and there were no compelling reasons to give him more time to work on reunification; the trial court noted the child's need for permanency and found that termination was in her best interest. *Crow v. Ark. Dep't of Human*

Servs., 2012 Ark. App. 313, 416 S.W.3d 269 (2012).

Father's parental rights were properly terminated because the Department of Human Services presented clear and convincing evidence supporting termination under subdivisions (b)(3)(B)(ix)(a)(4), (b)(3)(B)(viii), and (b)(3)(B)(ii)(a) of this section. Further, termination was in the child's best interest as the child was "readily adoptable," and there would be a risk of harm, both physically and psychologically, if the child were placed with the father based on his long history of criminal behavior, unstable lifestyle that included drugs, domestic violence, homelessness, and child endangerment. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. *Spangler v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 404 (2012).

Termination of the mother's parental rights was affirmed because the mother did not challenge the circuit court's determination that she was in no position to have her children returned to her and the circuit court's determination that termination was in the children's best interest in this case was not clearly erroneous. *Davis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 419 (2012).

Trial court did not clearly err in finding by clear and convincing evidence that it was in a child's best interest to terminate her mother's parental rights where it was clear that the mother's aggressive and oppositional behavior could potentially harm the health and safety of the child if the child were ever returned to her. Among other things: (1) the mother's foster mother testified that the mother was verbally aggressive, refused to comply with house rules, and became so unruly that the foster mother had to call the police; (2) the mother failed to complete her trial placement with her child because she would not cooperate with the Department of Human Services; and (3) the circuit court also specifically found that the mother failed to comply with its orders to attend school and to eliminate any social networking profiles. *B.H.1 v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 532 (2012).

Trial court did not err in finding that termination of a mother's parental rights was in her child's best interest under subdivision (b)(3)(A) of this section because the mother tested positive for drugs

during the case, she had no job or her own residence, she had encountered criminal charges, and she rarely visited the child when allowed. *Lovell v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 547 (2012).

Termination of parental rights was proper, because despite efforts of the Department of Human Services, reunification would be contrary to the health, safety and welfare of the children, and termination was in the children's best interest; risk of potential harm to the children if returned to the father was evidenced by his continuing inability to maintain employment, stable housing or transportation, and his failure to avail himself of services offered by the department. *Bradbury v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 680, 424 S.W.3d 896 (2012).

Termination of a father's parental rights was in the best interest of the children under subdivision (b)(3)(A) of this section because there was a proper permanency plan in place for the children, and there was a need for permanency where the case lasted more than two years. Moreover, despite the father's progress in some areas, he failed to consistently attend counseling and did not have stable housing for the children. *Spencer v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 96, 426 S.W.3d 494 (2013).

Termination of the mother's parental rights to her two youngest children was in their best interests under subdivision (b)(3)(A) of this section because, although she completed portions of her case plan, including anger-management classes, testimony indicated that the anger-control problem had not been resolved and could expose the children to potential harm. *Weatherspoon v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 104, 426 S.W.3d 520 (2013).

Court did not find that the trial court was mistaken in concluding that the potential of harm to the child existed if returned to the father, as he lived with persons who had drug and prison issues, he lacked stable housing and employment, he did not turn in requested information for a home study, and he had tested positive for drugs and had outstanding felony warrants against him. *Austin v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 406, 428 S.W.3d 573 (2013).

It was in the child's best interest to terminate the mother's parental rights because the evidence showed that there was potential harm in returning the child to her custody as there was evidence that drugs were being sold from her apartment and that she made only last-ditch efforts to obtain treatment for her drug addiction. *McBride v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 566 (2013).

Trial court properly awarded permanent custody of the mother's other son to his father under subdivision (b)(3)(A) of this section as the evidence showed that the father had an appropriate home and was financially secure, that the other son was doing well since being placed in his father's custody, and that the father provided stability for the child. *Gaskill v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 610 (2013).

Termination of a mother's parental rights was in the best interest of the children because the mother was unable to provide a safe and suitable home for the children, she failed to comply with the case plan, and she had not visited the children since May 2012. The mother had a long history of alcohol abuse, and she was likely to continue in an abusive relationship; moreover, the fact that two of the children might not have been adopted was merely one factor that was considered, and the fact that one child might not have consented to adoption was not a necessary element of proof in a termination case. *Mitchell v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 715, 430 S.W.3d 851 (2013).

Where a mother appealed a circuit's termination of her parental rights and her counsel filed a no-merits brief pursuant to Ark. Sup. Ct. & Ct. App. R. 6-9(i), there was ample evidence to find that it was in the child's best interest for the mother's parental rights to be terminated, and statutory grounds for termination existed. The mother unquestionably failed to comply with the case plan, failed to maintain any meaningful contact with her child, and basically demonstrated a complete lack of interest in the child. *Lockridge v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 91 (2014).

Circuit court found that, because the child was in a home where the foster parent stood ready to adopt and the father continued to expose the child to potential

harm due to drug use and possible contact with the mother, termination of the father's parental rights was in the child's best interest; the decision was affirmed. *Skaggs v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 229 (2014).

Circuit court properly found that it was in a child's best interest to terminate a mother's parental rights because the mother conceded that her parental rights to another child had been terminated, stipulated to a dependency-neglect finding due to her inability to provide the child with a safe and stable home environment, was incarcerated, and the child was young and adoptable. *Gwinup v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 337 (2014).

In a termination of parental rights case where the best interest of the child was at issue, appellate court was unable to say that the trial court erred by finding that the child was subject to potential harm if placed in the father's custody given his uncertain housing, missed visitation, and failure to participate in the early part of the case. *Stockstill v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 427, 439 S.W.3d 95 (2014).

Trial court's decision to terminate the mother's parental rights was not clearly erroneous where she had been incarcerated several times after the child's removal from the home, she had a history of mental instability and refused to take medication, her home life was unstable, and the only challenges were to witness credibility, which was not a sufficient basis for appeal. *Treadwell v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 457 (2014).

Mother's parental rights to 6 children were terminated under this section because there was ample evidence upon which to find that it was in the best interest of the children and that statutory grounds for termination existed; in a no-merit brief seeking to withdraw, counsel pointed out that the children were adoptable, the mother failed to address mental health issues, and she used drugs. Moreover, the mother manifested an incapacity or indifference to remedy the issues or factors that prevented the children from returning to her care. *Ware v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 467, 441 S.W.3d 913 (2014).

Father's parental rights were properly terminated under this section because it was in the child's best interest; despite the

termination of the father's rights to two other children due to a mother's mental health issues, the father continued to assert that there was no danger to the child in this case. *Drake v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 475, 442 S.W.3d 5 (2014).

Trial court's finding that termination of the mother's parental rights was in the child's best interests was affirmed where she had not maintained stable employment, her lack of financial resources prevented her from obtaining stable housing or transportation and prevented her from keeping her child support payments current, and her new-found sobriety was questionable at best. *Jung v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 523, 443 S.W.3d 555 (2014).

Termination of a mother's parental rights was affirmed where her lack of follow-through on her drug treatment, her use of alcohol during trial home placement, the state of the child in her care, and the higher stress that would be present with another child on the way would have endangered the child's health and safety in the mother's care. *Schaible v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 541, 444 S.W.3d 366 (2014).

There was no meritorious argument on the best interest requirement, as the children were at risk of potential harm if returned to the father's custody, as he was addicted to drugs and incarcerated for five years, plus the children were adoptable. *Frisby v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 566 (2014).

Trial court did not clearly err in its determination that termination of the mother's parental rights was in the best interest of the children, given that the children had been in and out of foster care for more than two years, the children had been removed originally due to substantiated reports of drug use and domestic violence, the mother separated only recently from the father, the mother failed to benefit from services, and there was sufficient evidence that the children would find permanency through adoption. *Willingham v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 568 (2014).

Termination of a mother's parental rights was in the best interest of a child because of the potential harm that existed if the child was returned to the mother. After her other two children were killed by

her husband, the mother failed to recognize the necessity of ongoing therapy and counseling and refused to acknowledge her role as protector. *Fox v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 666, 448 S.W.3d 735 (2014).

There was no clear error in the circuit court's finding that termination of the mother's rights would be in the child's best interest, given that the mother had not shown through her eleventh-hour compliance that she was a safe placement for the child, the mother used drugs and had unstable housing and continuously made decisions contrary to the child's best interest, and she was in a relationship with a recovering addict who was a felon. *Harbin v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 715, 451 S.W.3d 231 (2014).

There was no clear error in the circuit court's finding that termination of the mother's rights was in the children's best interest; after more than three years of treatment, the mother was unable to wean off methadone, the circuit court was not convinced she could safely parent the children, the mother failed to obtain stable housing and she was still married to the father, and the circuit court was concerned that continued contact with him would be harmful to the children. *Sarut v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 76, 455 S.W.3d 341 (2015).

Termination of a father's parental rights was improperly found to be in the best interest of the children where there was no evidence of adoptability, as required by this section; moreover, the children had a stable home with their mother and there was no expectation that they would be put up for adoption. *Lively v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 131, 456 S.W.3d 383 (2015).

Termination of the mother's parental rights was in the children's best interests because the return of the children to the mother's custody was contrary to their health, safety, or welfare; and, despite the offer of appropriate family services, she had manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate her circumstances preventing the children's return to her custody. The mother was still not employed, had not resolved warrants that arose soon after the case was filed, was not close to being able to provide adequate

housing, and had not even progressed to the point of having unsupervised visitation due to her outstanding warrants. *Ramsey v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 297 (2015).

Mother failed to demonstrate a close bond between her children and their maternal grandparents; the circuit court, which heard testimony that continued visits with the grandparents would not be in the children's best interest, did not clearly err when it terminated the mother's parental rights. *Delacruz v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 387, 465 S.W.3d 867 (2015).

Termination of the mother's parental rights to her children was in the children's best interests because the mother had made little or no progress learning sign language to effectively communicate with the eldest child; she was unemployed and unable to provide the court with any reasonable prospects of employment; she did not have reliable transportation or a driver's license; she had been inconsistent in attending therapy; and there was testimony that the children were adoptable. *Singleton v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 455, 468 S.W.3d 809 (2015).

Environmental, educational, and dental neglect were still issues and appropriately considered by the circuit court at the termination hearing; the mother lacked credibility and insight and had not remedied the conditions causing removal and potential harm was shown; the issue of the mother's drug abuse was highly relevant to the consideration of potential harm; and termination of the mother's parental rights was in the children's best interest. *Whittiker v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 467, 469 S.W.3d 396 (2015).

Trial court's finding that it was in the children's best interest for the mother's parental rights to be terminated was not erroneous, as the trial court found that if the mother were given additional time, it would not have made any appreciable difference toward reunification given her lack of progress in managing her mental illness. *Oldham v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 490, 469 S.W.3d 825 (2015).

Trial court's finding that termination of the mother's parental rights was in the best interest of the children was sup-

ported by evidence that the mother was never in full compliance with the case plan, as the mother stopped attending the required counseling sessions, was incarcerated for a short time, was not employed, had only visited the children eight to ten times in three years, and had no transportation, and that the children, who were all teenagers, did not want to live with the mother. *Chaffin v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 522, 471 S.W.3d 251 (2015).

Termination of a mother's parental rights was not error where there was evidence that the children had been harmed by ongoing domestic violence between the mother and her live-in boyfriend, and there was no evidence that they had any relationship with any members of the mother's family that would have been harmed by the termination. *Wilson v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 666, 476 S.W.3d 816 (2015).

Trial court erred in terminating a mother's parental rights to her child. While the child was dependent-neglected and there was admittedly a ground for termination—the previous involuntary termination of the mother's rights to another child, the trial court failed to consider or address adoptability and other relevant evidence in performing its best-interest analysis where evidence that the child was not born with drugs in her system (in contrast to the child for whom the mother's previous rights had been terminated) was relevant under Ark. R. Evid. 401 and counsel was prevented from completing a proffer of that evidence. *Brown v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 725, 478 S.W.3d 272 (2015).

Where most of the testimony indicated that the children had severe behavioral and emotional problems and were not yet adoptable, the trial court's finding was upheld that the children's best chance for permanency was to terminate the mother's rights and allow them to heal from the emotional problems the mother had caused. *Robinson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 53, 481 S.W.3d 474 (2016).

Termination of the father's parental rights was in the children's best interests because the Department of Human Services received a referral on April 21, 2014; the children reported that they had not

been in school since February 14, 2013, and that they had lived in their father's truck on at least two occasions; the children later reported physical abuse by the father, and that he would deny them food as a form of punishment; there was evidence that the father physically abused the children; a family service worker testified that the children were afraid of him; and there was no evidence of a strong relationship between the children and the paternal grandparents, in the current case, which would be jeopardized by termination. *Crowley v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 66, 482 S.W.3d 360 (2016).

Conclusion that termination of the father's parental rights was in the child's best interest was not clearly erroneous; the circuit court found that the child would have been at great risk of harm if returned to the father and mother, given their drug use, mental health issues, and inability to act lawfully as evidenced by their chronic incarceration. *McElwee v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 214, 489 S.W.3d 704 (2016).

Circuit court did not clearly err in determining that termination of a father's rights was in the children's best interest where he had been incarcerated throughout most of the proceeding, his compliance with directives to, *inter alia*, maintain appropriate housing and complete alcohol, drug abuse, and other treatments was poor, and he had visited the children only twice during the review period, and defendant's argument that the children were placed with the maternal grandmother was misplaced. *Scrivner v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 316, 497 S.W.3d 206 (2016).

Termination was in the children's best interest because returning them to the mother's care would likely result in serious emotional or physical damage; due to the chronic sexual abuse and educational neglect the children suffered while in her care, there was a significant risk of harm in returning the children to her. *Geatches v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 344, 498 S.W.3d 326 (2016).

Circuit court's ruling that termination of the father's parental rights was in the child's best interest was not clearly erroneous where there was no evidence that the child knew the aunt with whom she was placed two months before the termi-

nation hearing, there was no other evidence regarding whether placement with the aunt without termination was feasible or in the child's best interest, and the father had neither completed the case plan nor complied with important court orders. *Villaros v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 399, 500 S.W.3d 763 (2016).

Mother, who was in jail, lacked standing to claim there was no potential harm in returning the children to the children's father. *Murphey v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 430, 502 S.W.3d 544 (2016).

Circuit court clearly considered and weighed the father's compliance throughout the entire case and did not lightly reject his last-minute efforts, and as the circuit court considered and weighed everything and excluded nothing, for best interest purposes, there was no reversible error under case law. *Sharks v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 435, 502 S.W.3d 569 (2016).

While the mother accused the department of not adequately helping her with her anxiety issues, the trial court had found reasonable efforts on the part of the department, and reasonable efforts are typically associated with statutory grounds and not the best interest of the child. *Bell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 446, 503 S.W.3d 112 (2016).

Termination of the mother's parental rights was in the children's best interests because, regarding adoptability, the trial court had before it testimony that 57 potential families matched the children's characteristics; they were adoptable; they had been well-behaved and helpful since entering foster care; the foster mother would adopt them herself if not for her age and lifestyle; the children had thrived in the foster mother's home and had benefited from therapies and services; and the Department of Human Services had succeeded in finding families for similar children in the past; and because the mother maintained her relationship with the putative father after it was alleged that he sexually abused one of the children. *Bair v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 481 (2016).

Circuit court did not err in finding that termination of parental rights was in the children's best interest where the father

had failed to seek immediate medical care for the children's injuries, he had not obtained a divorce from the mother until the day of the termination hearing, and his hesitancy to believe that the mother had anything to do with the children's injuries justified the concern as to whether he would have protected the children. *Martin v. Ark. Dep't of Human Servs.*, 2017 Ark. 115, 515 S.W.3d 599 (2017).

Circuit court did not err in finding that termination of the father's rights was in the best interest of the children; to refuse to terminate the father's rights where the mother had relinquished her rights and the father was incapable or indifferent to remedying his situation so he could regain custody, solely to continue a relationship with grandparents who were unable to care for the children, was contrary to the need for permanency advocated by the statute. *Fuls v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 46, 510 S.W.3d 815 (2017).

Trial court did not err in finding that termination of a mother's parental rights was in the children's best interests where an adoption specialist testified that there were no barriers to adoption, and the mother failed to recognize the necessity of ongoing therapy and counseling and refused to acknowledge that her husband and son were abusive and posed potential harm to the children. *Taylor v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 60, 511 S.W.3d 366 (2017).

Subdivision (b)(3) of this section requires that the termination of parental rights decision be based on a finding, by clear and convincing evidence, that termination is in the children's best interest while considering the potential for harm to the children's health and safety if the children are returned to the parent. The trial court must only find by clear and convincing evidence that termination is in the children's best interest, giving consideration to the likelihood of adoption and the risk of potential harm. The likelihood of adoption and the risk of potential harm are merely factors for the court to consider in its analysis. *Bean v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 77, 513 S.W.3d 859 (2017).

Circuit court did not err in finding that termination of a mother's parental rights was in the best interests of the children

where the evidence showed that her delusions were likely to continue, her mental illness had prevented unsupervised visits during the entire two-year case period, supervision had increased over time, and the loss of mental health support once the case was closed favored termination rather than permanent placement with the grandmother. *Cobb v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 85, 512 S.W.3d 694 (2017).

Circuit court did not clearly err in finding that termination of a mother's parental rights was in the best interest of the children where her lack of insight into her mental-health diagnoses, inability to take responsibility for her therapy and recovery, and her positive drug tests demonstrated that there was a real risk that she would revert to past practices once judicial supervision was removed. *Brandau v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 87, 512 S.W.3d 636 (2017).

Circuit court's conclusion that termination of parental rights was in the child's best interest was affirmed where, based on their inability to be forthcoming or honest with the court, it was unlikely that the parents would abstain from corporal punishment. *Ekberg v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 103, 513 S.W.3d 307 (2017).

Termination of the mother's parental rights to five of her children was proper and in their best interests because there was a potential for harm if the children were returned to the mother. There were major concerns for the trial court, including testimony that one of the children made allegations of sexual abuse by her father, that the mother and the maternal grandmother were reluctant to believe the allegations, and that the domestic violence and sexual abuse in the home resulted in the post-traumatic-stress disorder exhibited by the child; and the family-service worker testified that the child alleging sexual abuse was adoptable as she was very sociable, and she had made progress in therapy that supported her being adopted. *Vega v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 106, 513 S.W.3d 298 (2017).

Termination of a father's parental rights was in the children's best interest where the court was not required to identify a resulting potential harm from placing the children with the father, and the

subsequent-factors evidence also supported the best-interest determination. *Terrones v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 115, 515 S.W.3d 144 (2017).

Termination was in the child's best interest where the mother's failure to maintain sobriety for any significant length of time, the child's exposure to violence during the mother's abusive relationship with a former boyfriend, and the child's deteriorating behavior when in the mother's custody demonstrated the potential harm in returning the child to the mother's custody. *Greenhill v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 194, 517 S.W.3d 473 (2017).

Circuit court's finding that termination of the mother's parental rights was in the child's best interest was affirmed given her boyfriend's untreated schizophrenia; her financial deficiencies and reliance on her mother and sex-offender father for money, which situation was likely to be exacerbated by her current pregnancy and unemployment; and the fact that the child had been in the State's care for 21 of the 24 months of her life. *Salazar v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 218, 518 S.W.3d 713 (2017).

Although the father argued that there was insufficient evidence to demonstrate a risk of potential harm to the child to support the trial court's best-interest finding, termination of his parental rights was upheld as the father admitted his housing was not currently stable and that he had some trouble getting through life, maintaining a stable place, stable job, and making contact with probation officers; the father was put in jail on three separate occasions during the pendency of the case; and the trial court did not err in looking at the father's past instability and concluding that there was nothing to demonstrate that he would be able to acquire or maintain safe, stable housing in the future. *Caruthers v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 230, 519 S.W.3d 350 (2017).

Termination of a mother's parental rights was in the child's best interests where the testimony and evidence supported the circuit court's conclusion that leaving the child in limbo for several more months in order to see if the mother's speculations about future employment, housing, and sobriety were realized, posed

a potential harm to the child. *Smith v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 368, 523 S.W.3d 920 (2017).

Termination of a father's parental rights was in the children's best interest, taking into consideration the likelihood the children would be adopted and the potential for harm if returned to the father, as the father did not provide proof of completed parenting classes or undergo drug-and-alcohol assessments, did not pay child support as ordered, and tested positive for THC. *Miller v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 396, 525 S.W.3d 48 (2017).

There was no clear error in the circuit court's determination it was in the child's best interest for the mother's parental rights to be terminated because the mother failed to follow the circuit court's orders regarding proof that she remain drug-free, and she continued her relationship with her fiancé even after the circuit court found he was an inappropriate person to be in the child's life. *Curtis v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 465, 527 S.W.3d 762 (2017).

Termination of a mother's parental rights was in the best interest of her children because she posed a risk of potential harm to the children in that witnesses testified that they were concerned with her capacity to independently care for the children, due to her untreated mental-health issues, while a family-service worker testified that the mother had failed to maintain stable housing throughout the case and had admitted that her fiancé, who had a history of drug abuse, was living with her. *Bynum v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 471, 528 S.W.3d 859 (2017).

Termination was in the child's best interest where an adoption specialist testified that the child was adoptable despite his medical issues, the mother was incarcerated and facing new felony charges at the time of the hearing, and the mother acknowledged that she had not participated in parenting classes or drug therapy classes. *Baxter v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 508 (2017).

Termination of a mother's parental rights was in the children's best interest where the caseworker spoke specifically about her belief as to the adoptability of each individual child and discussed the potential barriers, or lack thereof, to adop-

tion for each child, and the mother's continued drug use was sufficient to support a finding of potential harm. *Furnish v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 511, 529 S.W.3d 684 (2017).

Termination of the father's parental rights was in the child's best interest; the caseworker did not include sexual aggression in running the adoption match as the Department of Human Services had twice submitted the child for professional evaluations for sexual aggression and both evaluations determined that he was not sexually aggressive, and the father's sister had not completed the necessary steps for placement. *Connors v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 579, 537 S.W.3d 736 (2017).

Decision that it was in the best interest of the children to terminate the mother's parental rights was not clearly erroneous because the evidence showed that the mother had a history of drug use, the children had been out of her custody for 20 months at the time of the termination hearing, and she was arrested on four different occasions after the children were removed from her custody. *Jacobs v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 586, 532 S.W.3d 627 (2017).

Termination of the father's parental rights was in the children's best interests because the record supported adoptability, and the children were three years old, but the father had not met, contacted, or sought visitation with them; the children had been in the custody of the Department of Human Services their entire lives; although the father testified that relatives would care for the children, he testified that he had not had any discussions with relatives about caring for them; he was unsure of his release date and had not secured stable housing and employment; and the father had not provided the caseworker with a list of relatives willing to care for the children. *Earls v. Ark. Dep't of Human Servs.*, 2018 Ark. 159, 544 S.W.3d 543 (2018).

Termination of parental rights was in the child's best interest where, *inter alia*, the parents had a history of neglecting his medical and dental needs, and there was testimony that the child would not reach his full potential without therapies to address his developmental delays. *Allen v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 136, 540 S.W.3d 742 (2018).

Finding that it was in the children's best interest for parental rights to be terminated was not clearly erroneous because one of the children had symptoms of anxiety leading up to the termination hearing, did not want to visit the parents, and was afraid that the parents would kidnap the child. The parents tested positive in drug-and-alcohol screens, the mother visited the children inconsistently, and the parents presented no evidence that there was an approved relative who was ready, willing, and able to take custody of the children. *Pearson v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 305, 549 S.W.3d 418 (2018).

Court of Appeals could not say that the trial court clearly erred in finding there was potential harm in returning the children to the father's custody; the father stayed in touch with the children's mother after their divorce despite their longstanding domestic violence problems, and although the therapist testified that the father's depression and anxiety would not harm the children, the therapist also testified that he could not get a full picture of the father's parenting skills because the father had attended so few counseling sessions and that he had made little progress in counseling. *Scott v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 347, 552 S.W.3d 463 (2018).

Termination of the father's parental rights was in the child's best interests because the child was adoptable; the father and the child had no relationship; there was no evidence that the father, while in prison, tried to contact the child directly; during the four months that he was on parole, the only evidence of the father's contact with the child was his testimony that he called her a couple of times; he had an extensive criminal history; and there was evidence that the child was in a stable foster home and was thriving. *Fraser v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 395, 557 S.W.3d 886 (2018).

After the mother's two younger children were found in a hotel room with three adults, at least two of whom appeared to be under the influence of drugs, where police found methamphetamine, needles, a spoon on the bathroom floor, and a firearm in a duffle bag on top of a dresser, termination of the mother's parental rights to a third child (her oldest child)

was proper, and he would remain in the physical custody of his father. There was evidence that the mother posed a potential harm to all three of her children, there was no evidence that continued contact with the mother would serve the oldest child's best interest in any way, and the mother's dangerous behavior did not abate during the case. *Foster v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 418, 559 S.W.3d 762 (2018).

Termination of the mother's parental rights was in the child's best interests because the adoption specialist for the Department of Human Services (DHS) testified that the child was healthy, young, and adoptable, that there were 398 adoptive families who matched the child's characteristics, and that DHS knew of specific families who might wish to adopt her; and returning the child to the mother's custody would subject her to potential harm as the mother tested positive for methamphetamine and agreed that she had a drug problem, but refused to complete the drug-treatment programs, counseling, or parenting classes, and she was incarcerated three times during the case and was incarcerated at the time of the termination hearing. *Murphy v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 426, 560 S.W.3d 465 (2018).

Termination of the mother's parental rights was in the child's best interest because the testimony showed that the mother had only minimally complied with the case plan, had tested positive on drug screens, had stopped visiting the child regularly, and was in no better position to regain custody of the child than when the child was removed; and the caseworker testified that it was highly likely that the child could be adopted. *Harley v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 428, 556 S.W.3d 544 (2018).

Termination of the mother's parental rights was in the child's best interests because the child had been in the custody of the Department of Human Services for almost 15 months; the mother was incarcerated at the time of the hearing for drug court sanction, awaiting release to then enter a four-month drug treatment program; the mother lacked the stability of a home, an income, and transportation; and the child would be required to wait until the mother potentially reached a point of stability to care for the child. *Wright v.*

Ark. Dep't of Human Servs., 2018 Ark. App. 503, 560 S.W.3d 827 (2018).

Termination of a mother's parental rights to her teenage child was in the child's best interest; the trial court found that, notwithstanding the child's epilepsy, there were no barriers to adoption, the risk of harm to the child in returning the child to the mother was great, and a foster family wanted to adopt the child. *Strickland v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 608, 567 S.W.3d 870 (2018).

Termination of the mother's parental rights to four of her children was in the children's best interests because the mother's lack of stability posed a risk of potential harm to the children if returned to her custody; the mother had lived in five different locations throughout the pendency of the case, she had no housing, income, or transportation when the trial placement ended, which was over 12 months into the case, and she had tested positive for methamphetamine in January 2018, which was 12 months into the case. *Bailey v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 134, 572 S.W.3d 902 (2019).

Termination of mother's parental rights was in the best interest of the child as the circuit court's determination that the child would suffer potential harm if returned to the mother's custody was not clearly erroneous; the mother was unable to maintain sobriety for an extended period of time, and the circuit court did not find the mother's testimony that the mother was then sober and would remain so to be credible. *Holdcraft v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 151, 573 S.W.3d 555 (2019).

Sufficient evidence supported the circuit court's finding that termination of a father's parental rights was necessary and in the child's best interest where placement with the maternal grandmother was not necessarily a permanent or stable option given that the child was still in the custody of the Department of Human Services and the mother's rights had been terminated. Moreover, the father was expected to remain in rehab for at least three more months, he failed to comply with the case plan throughout the case, he did not have employment for more than a year, and he did not have stable housing by the time of the termination hearing. *Heath v. Ark. Dep't of Hu-*

man Servs., 2019 Ark. App. 255, 576 S.W.3d 86 (2019).

Termination of the mother's parental rights was in the children's best interest because she denied or minimized substance-abuse issues, domestic-violence issues, parenting issues, criminal acts, and overall stability issues; she had not demonstrated stability or fitness as a parent, she had abandoned her children for most of the case, and she had failed to comply with the case plan until just before the termination proceedings; and she did not acknowledge the physical danger she had placed her children in during her violent outbursts. *Covin v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 259, 576 S.W.3d 530 (2019).

Termination of the mother's parental rights was in the best interest of the children because all three children were adoptable, and all three children would be at risk of harm if returned to the mother as her persistent, all-encompassing instability had been physically and emotionally traumatic to the children. *Wright v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 263, 576 S.W.3d 537 (2019).

Although the father was in a drug rehabilitation program at the time of the hearing, termination of the father's parental rights was in the children's best interests as the father was unable or unwilling to get his emotional, mental, criminal, and drug issues in check within a reasonable time; he failed to complete the steps necessary to reach the case-plan goals that were intended to help him become the safe, stable parent that the children needed; and the current caregivers had expressed an interest in adopting the children. *Joslin v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 273, 577 S.W.3d 26 (2019).

Termination of the father's parental rights was in the child's best interest because the father began serving a 30-year prison sentence for second-degree murder in 2016 — just two years before the termination hearing when the child was two years old; the duration of the father's prison sentence as well as the violent nature of the offense supported the court's potential-harm finding; and, as to relative placement, the father's mother also had a second-degree-murder conviction, and his grandmother did not appear at the termination hearing. *Williams v.*

Ark. Dep't of Human Servs., 2019 Ark. App. 280, 577 S.W.3d 402 (2019).

Termination of both parents' rights was in the children's best interests as neither parent had ever maintained a home where the children could live; they had never demonstrated the ability to safely parent the children; and their drug rehabilitation was still a work in progress at the time of the hearing. *Arnold v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 300, 578 S.W.3d 329 (2019).

Circuit court properly terminated a father's parental rights to his daughter for failure to remedy by the noncustodial parent, where the incarcerated father did not challenge that ground nor the adoptability prong or the potential-harm prong of the circuit court's best-interest finding. *Carson v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 399 (2019).

Termination of the father's parental rights was in the child's best interests because there was a sufficient showing of potential harm to the child and the adoptability issue made no legal difference as there were serious and obvious concerns about the danger the father posed to his child and his indifference to protecting and caring for her and meeting her physical and developmental needs; an assistant professor of pediatrics testified at the adjudication hearing that the child was severely malnourished, dehydrated, and critically ill, she had severe electrolyte abnormalities, her condition was life-threatening, she was unable to stand without support, and she was uncomfortable with any movement. *Davidson v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 402, 585 S.W.3d 738 (2019).

Given the mother's no-contact-order violations, history of repeated abuse in her relationship with her boyfriend, and inability to protect the children from him, the circuit court's best-interest finding against her was not clearly erroneous. *Davis v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 406, 587 S.W.3d 577 (2019).

Circuit court properly terminated a mother's parental rights to her children because its best-interest finding was not clearly erroneous; the mother was unstable and had a drug problem and had been arrested on multiple occasions during the case, and it was the second dependency-neglect case in which the children had been removed from the mother's cus-

tody. *Cooper v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 425, 588 S.W.3d 43 (2019).

Circuit court properly terminated a mother's parental rights to her children despite the mother's best-interest argument concerning the circuit court's consideration of the children's sibling bond; the evidence showed that the children had already been placed in separate homes, one child's placement was potentially a long-term placement, and the other children could remain in their placement as long as necessary. *Cooper v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 425, 588 S.W.3d 43 (2019).

Circuit court did not clearly err in finding that it was in the best interest of two male children, ages 13 and 16, to terminate their mother's parental rights; although the circuit court accepted and considered evidence concerning the children's preferences regarding placement and against adoption, the Department of Human Services was not required to provide any proof on the issue of consent to adoption. Further, the mother failed to preserve any argument regarding the children's preferences or likelihood of consent; the circuit court was not required to give the mother more time based on a vague hope of improvement, especially when the children had been out of her custody for 19 months; and no evidence was presented to the circuit court regarding a viable relative placement or custody option. *Whitehead v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 442, 587 S.W.3d 590 (2019).

Trial court did not clearly err in finding that termination of the father's parental rights was in the best interest of the children because he might have had housing and employment, but he had not provided the Department of Human Services with any proof of it; the trial court did not consider supervised visitation, likely because the father had not appeared at a special hearing to discuss the no-contact order and it was unclear whether he had asked for visitation after he missed that special hearing; the father did not seek to have the no-contact order lifted; and the trial court was not even aware that he wanted custody of his children until the 15-month review hearing. *Hernandez v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 449, 588 S.W.3d 102 (2019).

Termination of the mother's rights was in the child's best interests, given that the mother had no relationship with the child, the mother lacked a stable income and was unemployed, and the child was extremely close with her half-sister and they could be adopted together. *Chastain v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 503, 588 S.W.3d 419 (2019).

Circuit court did not clearly err in finding that termination of the mother's rights was in the child's best interest simply because the putative father's rights had yet to be determined as the mother lacked standing to argue that the court had ignored the father's parental rights, and subdivision (c)(2) of this section clearly contemplates the termination of only one parent's parental rights when it is in the child's best interest; however, adoption of the child was premature due to the unresolved paternity issue. *Dominguez v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 2, 592 S.W.3d 723 (2020).

Circuit court did not clearly err in finding that it was in the best interest of the children to terminate a mother's parental rights where the mother had allowed inappropriate people to be around her children, which led to the sexual abuse of one of the children, and there was evidence that the mother had not acknowledged the abuse suffered by the child and had not accepted her role in the abuse the child suffered. *Huddleston v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 24, 592 S.W.3d 266 (2020).

Trial court's decision that it was in the children's best interest to terminate the father's parental rights was not clearly erroneous because an adoption specialist testified that there were several families willing to adopt the children, the father's testimony that he would be released from prison in five weeks was disputed by the Department of Human Services, and the father had not demonstrated the ability to safely parent the children as he had not maintained sobriety and stability outside a structured, controlled environment. *Adame v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 248, 601 S.W.3d 432 (2020).

Even though adoption was not currently being pursued, termination of the mother's rights was in the two-year-old child's best interest because the child was in foster care, not the custody of the other

parent; the child had been in foster care for all but the first two days of his life, and it was only a possibility that he would ever be placed with the father, who had been incarcerated for most of the child's life but was no longer incarcerated; the mother had been incarcerated for the child's entire life and at the time of the termination hearing was not due to be released for three more years; and courts will not enforce parental rights to the detriment of the well-being of the child. *Dean v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 286, 600 S.W.3d 136 (2020).

Circuit court did not clearly err in finding that termination of the mother's parental rights was in the children's best interest because the potential harm caused by returning the children to the mother was clear, as they had been in the Department of Human Services' custody for over 18 months, the mother was living in her van at the time of the hearing, she was working only part time and admitted she did not have sufficient income to support the children, and her choices in regard to men were an issue throughout the case. *Doucet v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 323, 603 S.W.3d 643 (2020).

Burden of Proof.

There was clear and convincing evidence for all five statutory grounds for termination, but the human services department was only required to prove one ground by clear and convincing evidence. *Jones v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 717 (2014).

In a parental rights termination case, clear and convincing evidence supported the trial court's finding that the placement plan for appellant's children was appropriate, and further, that the children were adoptable. Clear and convincing evidence also supported the trial court's finding that it was unlikely that services to the family would result in successful reunification within a reasonable period of time. *Dunbar v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 472, 503 S.W.3d 821 (2016).

Collateral Attack.

Because juvenile courts have exercised jurisdiction over juveniles in the past under color of state law, their proceedings and judgments are not subject to collat-

eral attack. *Hutton v. Ark. Dep't of Human Servs.*, 303 Ark. 512, 798 S.W.2d 418 (1990).

Confrontation of Witnesses.

Supreme Court of Arkansas declined to extend the Sixth Amendment right to confront witnesses to parental rights termination cases. *Taffner v. Ark. Dep't of Human Servs.*, 2016 Ark. 231, 493 S.W.3d 319 (2016), cert. denied, — U.S. —, 137 S. Ct. 687, 196 L. Ed. 2d 566 (2017).

In a termination of parental rights case, the trial court did not commit reversible error by excluding the father from the courtroom during the child's testimony because the Sixth Amendment right to confrontation applied to criminal prosecutions. *Adams v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 101, 572 S.W.3d 16 (2019).

Consent.

Termination of a mother's parental rights was appropriate because the mother signed and filed a document with the court in which the mother voluntarily consented to the termination. The trial court did not err in failing to consider the mother's attempt to revoke the consent as the mother filed a handwritten pro se note that failed to comply with the statutory requirements and was filed seven days after the expiration of the withdrawal period. The trial court's order was modified to make it clear that the mother's termination of parental rights was consensual and voluntary. *Parker v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 394, 586 S.W.3d 655 (2019).

Continuance Denied.

Termination of the mother's parental rights was proper because the mother failed to show on appeal that the circuit court abused its discretion in denying her request for a continuance. In her brief, the mother offered no discussion or analysis of why the circuit court's denial of her motion for continuance constituted an abuse of discretion or caused her prejudice; rather, she simply stated that by denying the motion, the trial court abused its discretion. *Renfro v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 419, 385 S.W.3d 285 (2011).

Mother filed her motion for continuance only three business days prior to the scheduled termination hearing, and there

was no good cause for continuance shown, and thus the trial court did not abuse its discretion in denying the motion. *Mosher v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 111, 455 S.W.3d 367 (2015).

In a parental rights termination case, the trial court did not abuse its discretion in denying appellant father's request for a continuance; even if the court had allowed a continuance until the father was released from prison, his past behavior indicated that he was not likely to follow through with all of the steps necessary for reunification. The goal of this section, which is to provide permanency for the minor child, would have been thwarted had the trial court granted the father's request for an indefinite extension of time. *Martin v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 407, 465 S.W.3d 881 (2015).

In a termination of parental rights case, a circuit court did not abuse its discretion by denying the parents' request to continue the termination hearing until after the circuit court held a hearing on whether the children would be placed with their paternal grandmother; the circuit court thoroughly considered and discussed the motion for continuance at the hearing. *Gregrich v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 564, 473 S.W.3d 41 (2015).

Mother's assertions did not provide good cause to grant another continuance in her termination case, as much of the discovery about which she complained related to a different child, not a party to this appeal, and much of the discovery sought was already in the record and readily available to the mother; as to her complaint that she was entitled to more time to prepare for the amended petition to terminate parental rights, this was rejected because the amendment was exactly the same content and contained the same allegations. *Bell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 446, 503 S.W.3d 112 (2016).

Circuit court did not abuse its discretion in denying the mother's request for a continuance, and she could not demonstrate prejudice; she did not request the continuance until the beginning of the termination hearing, which demonstrated a lack of diligence, plus the circuit court had already granted two continuances, and her past behavior indicated that, even

if the court allowed a continuance until she was released from prison, she was not likely to follow through with the steps necessary for reunification. *McGaugh v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 485, 505 S.W.3d 227 (2016).

Circuit court did not abuse its discretion in denying a mother's motion for a continuance, when the mother expressed discomfort about being represented by an attorney who was a stranger to the mother, because the attorney was perfectly capable of providing representation for the mother, the witnesses were available and ready for the hearing, and the court was concerned that one of the children was extremely anxious about the hearing and a delay would not be good for the child's health and well-being. *Pearson v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 305, 549 S.W.3d 418 (2018).

Continuance for Good Cause.

There was good cause for a continuance of a mother's parental rights termination hearing — and a circuit court abused its discretion in denying the continuance — because the continuance would have allowed the mother to execute a consent and waiver so that her son could be adopted by his grandmother. *Rhine v. Ark. Dep't of Human Servs.*, 101 Ark. App. 370, 278 S.W.3d 118 (2008).

Default Judgment.

In a termination of parental rights case under this section, a trial court did not really enter a default judgment against a father due to a failure to appear, despite the use of such language, due to its extensive consideration of the evidence in the case. The trial court's approach satisfied its obligation to determine the best interest of the child and to safeguard the father's equal protection and due process rights to the children. *Osborne v. Ark. Dep't of Human Servs.*, 98 Ark. App. 129, 252 S.W.3d 138 (2007).

Dependent-Neglected Juvenile.

On appeal from the termination of her parental rights, the mother's argument that it was a logical fallacy and inconsistent with legislative intent under subdivision (b)(3)(B)(i)(a) of this section that the definition of "dependent-neglected juvenile" under § 9-27-303 included a "dependent" child was without merit. The statute's clear and unambiguous language

expressed that a dependent-neglected juvenile included a dependent juvenile. *K.C. v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 353, 374 S.W.3d 884 (2010).

As the parents' children were subjected to brutal physical beatings and were compelled to witness the public beatings of others at the order of their church leaders, and as the parents refused to seek and obtain safe and stable housing or employment outside the church, their parental rights were properly terminated pursuant to this section. *Parrish v. Ark. Dep't of Human Servs.*, 2011 Ark. 179 (2011).

Trial court's decision to terminate the mother's parental rights under this section was not clearly erroneous where the infant, who was born prematurely and required special care, was adjudicated dependent-neglected due to medical neglect in June 2011, the guardian ad litem did not approve of the mother's overnight visitations with the infant, and the mother conceded that the infant was adoptable. *Perkins v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 374, 439 S.W.3d 72 (2014).

Due Process.

Order terminating a mother's parental rights to her children pursuant to this section was upheld because she was not deprived of her parental rights without due process since she had notice of the hearing and was given the opportunity to voice her objection to fact that the trial court failed to order continuation of reunification services. *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

Affirming the termination of the mother's parental rights under subdivision (b)(3)(B)(vii)(a) of this section would have resulted in a violation of the mother's due-process rights because due process required, at a minimum, notice reasonably calculated to afford a natural parent the opportunity to be heard prior to terminating his or her parental rights. The mother had no notice that her parental rights might be terminated based upon her mental deficiencies. *K.C. v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 353, 374 S.W.3d 884 (2010).

Trial court relied on the failure to provide support or maintain contact as a ground to terminate, but this ground was not alleged, and because the father was never specifically informed that this

ground was being asserted against him, he was denied the chance to fully develop a defense; the trial court's reliance on this ground was clearly erroneous, as due process mandated that the father be given a chance to properly defend the allegations against him. *Jackson v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 411, 429 S.W.3d 276 (2013).

Attorney's failure to require proof that a termination of parental rights petition was personally served on a mother in prison did not invoke the third *Wicks* exception where the attorney had been served pursuant to Ark. R. Civ. P. 5, the mother had not challenged the finding that she was properly served at the outset of the case, and thus the attorney's lack of knowledge about whether the mother had also been personally served with the termination petition and notice of the termination hearing and counsel's failure to require proof of Ark. R. Civ. P. 4 service of same were not flagrant and egregious errors that required the court to step in on its own. *Vogel v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 671, 476 S.W.3d 825 (2015).

Incarcerated mother's absence from the hearing did not violate due process where she was represented by counsel, counsel had presented the mother's case effectively, and it was unlikely that the mother's presence would have changed the outcome. *Vogel v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 671, 476 S.W.3d 825 (2015).

Although the incarcerated father was not present, his attorney fully participated during the termination of parental rights hearing; nothing indicated that the father's due process rights could not have been safeguarded in his absence, and thus there was no reason for the trial court to step in on its own motion and raise the father's due process argument. Consequently, the father's absence from the hearing did not fall within the third *Wicks* exception to issue preservation rules and his due process argument could not be addressed due to lack of preservation. *Edwards v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 37, 480 S.W.3d 215 (2016).

Father's claims that his due process rights were violated when he was prevented from attending the permanency-planning hearing were not preserved for appeal as he only appealed the parental

rights termination order. *Scrivner v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 316, 497 S.W.3d 206 (2016).

Circuit court did not err in terminating a father's parental rights based on the subsequent-factors ground where that ground was argued by the Department of Human Services at the termination hearing, the court ruled from the bench that it was terminating on that ground, and the father did not object or make any argument as to the reliance on that ground. *Mitjans v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 472, 561 S.W.3d 747 (2018).

Evidence.

Evidence established that the Department of Human Services pursued meaningful efforts to rehabilitate the home and that the parents chose to ignore or failed to benefit from the services provided by the department where the department provided the parents with counseling and parenting classes and they were allowed visitation with the child, but, following their participation in the counseling and parenting classes, the child suffered a new injury at her initial unsupervised visit with them, and the department then changed the goal of its plan from reunification to termination of parental rights. *Ullom v. Ark. Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000).

Evidence established that the parents manifested an incapacity or indifference to remedy the subsequent issues or factors that demonstrated that return of the child to the family home would be contrary to her health, safety, or welfare where, when the child was only 21 days old, the parents caused her to suffer a spiral fracture and then, even after receiving family services provided by the Department of Human Services, on the very next occasion in which they were alone with the child, she suffered bruising to both sides of her face, for which no satisfactory explanation was provided. *Ullom v. Ark. Dep't of Human Servs.*, 340 Ark. 615, 12 S.W.3d 204 (2000).

The chancellor did not err in terminating the parental rights of a mother, who was in and out of jail during the pendency of the case, where she conceded that she did not correct the conditions that caused her children's removal, she made no attempt to comply with the court's orders

even when she was not incarcerated, she remained out of jail or rehabilitation for only 24 days during the pendency of the case and admitted that she did not comply with the court orders for even that brief period of time. *Malone v. Ark. Dep't of Human Servs.*, 71 Ark. App. 441, 30 S.W.3d 758 (2000).

Evidence was insufficient to establish that the mother willfully refused to support her child where there was no appreciable evidence that she had the ability to pay even a nominal amount of support even after she stopped abusing drugs and started working at regular employment. *Minton v. Ark. Dep't of Human Servs.*, 72 Ark. App. 290, 34 S.W.3d 776 (2000).

A chancellor's ultimate conclusion that the child at issue, a toddler, had not and was unlikely to bond with the mother was clearly erroneous where the mother was allowed only a single overnight visit; the child's foster mother acknowledged that the child required two or three weeks for "settling in," and the Department of Human Services steadfastly opposed giving the mother that kind of time. *Minton v. Ark. Dep't of Human Servs.*, 72 Ark. App. 290, 34 S.W.3d 776 (2000).

The trial court properly terminated a father's parental rights where (1) the child came to the attention of the state because she suffered sexual abuse, and, as part of the investigation into the abuse, it was found that she was living under deplorable conditions, (2) during the first year of the child's life, the father provided no support, but was thereafter ordered to pay support and granted reasonable visitation after a paternity test, (3) the father never took any action to protect the child and to remove her from her situation and, although he asserted that he tried unsuccessfully to find her, such excuse was not persuasive, and (4) the father signed a consent that the child be adopted and never asked to intervene in the dependency/neglect case to request that custody be placed with him. *Larscheid v. Ark. Dep't of Human Servs.*, 343 Ark. 580, 36 S.W.3d 308 (2001).

A mother's parental rights were properly terminated on the ground that her children had been adjudicated to be dependent-neglected and had continued out of the home for 12 months and that, despite a meaningful effort by the department to rehabilitate the home and correct

the conditions that caused removal, those conditions had not been remedied by the mother where she had not managed to consistently maintain her home in a sanitary condition or to acquire a steady job which would have enabled her to provide for her children and, in addition, there was evidence that the physical abuse of the children had not ended. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001).

Evidence was sufficient to support the termination of a mother's parental rights where (1) the children had been adjudicated dependent-neglected, they continued out of the home for more than 12 months, and the conditions causing their removal from the home had not been remedied at the time of termination, (2) the Department of Human Services had made meaningful efforts to rehabilitate her home and correct the conditions that caused removal, but the mother failed to take advantage of any of the forms of assistance she was offered, (3) the foster family with whom the children were living wanted to adopt them, (4) the mother was incarcerated for drug abuse at the time of termination and would not be released on parole until she was able to obtain stable housing, a feat she had been unable to accomplish in the two years pending termination of her parental rights, and (5) the mother had been unable to maintain steady employment when not incarcerated, continued to test positive for drugs, and refused to obtain treatment. *Bearden v. State Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

Termination of parental rights upheld where mother failed to rehabilitate the home and misled the chancery court about her mental health status. *Cassidy v. Ark. Dep't of Human Servs.*, 76 Ark. App. 190, 61 S.W.3d 880 (2001).

Terminating a mother's parental rights was based on clear and convincing evidence where (1) the child was originally taken in custody by the state human services department based on sexual abuse allegations, (2) when the department took custody of the child, the mother had legal custody of the child, (3) the child had been adjudicated dependent-neglected, (4) the mother failed to resolve her legal problems, despite having received financial assistance from the department to do so, (5) the mother failed to regularly attend

her counseling appointments and had either been fired from or quit her job, (6) the trial court found that the mother's behavior in failing to take advantage of the numerous services offered to her indicated that she was not willing to work toward having the child returned to her, and (7) termination was in the child's best interests. *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004).

Termination of father's parental rights was proper where the evidence demonstrated that the father failed to address his problems with alcohol and anger management, failed at any meaningful participation in therapy, and refused to establish a stable living environment for his children. *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004).

Where the Department of Human Services supervisor testified that she had overheard the mother asking for a phone number so she could call and cancel a therapy appointment and that the mother's house was cold, filled with trash, and smelled like rotting food, the trial court's decision to terminate the mother's parental rights was supported by clear and convincing evidence. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Trial court properly terminated the parental rights of the mother and father and found that each parent, either as the offender or as the accomplice, had committed a felony battery against a grandson of the mother because the mother's story that she was not involved was implausible considering the medical testimony; termination was in the child's best interests under subdivision (b)(3)(A) of this section given that the child was a dependent-neglected child under § 9-27-303, and one purpose of § 9-27-302(2)(B) was to protect a juvenile's safety. *Todd v. Ark. Dep't of Human Servs.*, 85 Ark. App. 174, 151 S.W.3d 315 (2004).

Evidence demonstrated that potential harm might result if the parents continued contact with the two children, including the fact that the case arose primarily from the parents' ongoing and adverse living arrangements that resulted in sexual abuse of their two-year-old daughter, exposure to drug use, pornography, and an unsafe environment, the parents

failed to secure stable housing or employment, failed to complete their weekly counseling sessions, and refused on several occasions to submit to random drug testing. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Father's parental rights were properly terminated under subdivision (b)(3)(B)(i)(a) of this section where the child had been adjudicated neglected and had been living away from the home for more than 12 months and, despite the provision of counseling, transportation, furniture, and food stamps, the father had neglected the child's medical and educational needs during a trial placement. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Appellant's parental rights were properly terminated given evidence that appellant did not have stable housing or a stable job and had failed to complete a case plan; appellant could not complain that the Department of Human Services had failed to make a referral for a psychological evaluation given appellant's failure to keep in contact with the department, and there was sufficient evidence to find that the children were adoptable. *Cobbs v. Ark. Dep't of Human Servs.*, 87 Ark. App. 188, 189 S.W.3d 487 (2004).

Trial court erred by terminating a mother's parental rights without giving the mother a reasonable time to demonstrate that her child could be safely returned to her home where, at the review hearing, testimony indicated that the mother had not tested positive for drugs, remained drug free throughout the entire program, and maintained stable employment; the evidence demonstrated that she had corrected the conditions which led to the removal of her son from her home. *Kight v. Ark. Dep't of Human Servs.*, 87 Ark. App. 230, 189 S.W.3d 498 (2004).

Termination of parental rights was proper where the evidence showed that the mother, who had three children before she was 18, failed to participate in reunification plans, left her children in a foster home in order to return to a relative's house, had no visible means of supporting the children, failed to comply with court orders for 30 months, and left the children unattended. *Maxwell v. Ark. Dep't of Human Servs.*, 90 Ark. App. 223, 205 S.W.3d 801 (2005).

Evidence was sufficient to support termination of parental rights when parents were told to stop smoking in the home because of the children's health problems but they refused to do so, the house was filthy and in disarray, the oldest child came to school reeking of cigarette smoke, and the child had head lice and had to be bathed at school because of poor hygiene. *Sowell v. Ark. Dep't of Human Servs.*, 96 Ark. App. 325, 241 S.W.3d 767 (2006).

Parents' argument that the trial court erred in taking judicial notice of counselor's testimony, which took place prior to the termination hearing, was rejected because the parents did not object to any portion of the counselor's testimony or argue that they were in any way inhibited by the lack of her case file in conducting their cross-examination; the parents were afforded the opportunity to subpoena the counselor but they failed to do so and they also failed to ask for a continuance. *Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006).

Trial court clearly erred in terminating the mother's parental rights as (1) since the mother's psychotic episode, she had made consistent efforts to improve her parenting skills and had reached point where she could raise her children despite her mental deficiencies; (2) the mother made sincere efforts to comply with every order of the court; (3) the only evidence of the mother's failure to comply with the trial court's orders was the evidence that she would sometimes neglect her housekeeping duties, but there was no evidence that the condition of her home reached the dangerous level that warranted the initial Department of Human Services intervention; (4) the evidence showed that the mother would need help in caring for her children, but it did not show that the mother was unable and unwilling to care for her children; (5) there was no evidence that mother's efforts to comply with the case plan were insincere; and (6) the children were comfortable with the mother, and she testified that she was ready to take the children into her home and that if she needed help, she knew where to go. *Benedict v. Ark. Dep't of Human Servs.*, 96 Ark. App. 395, 242 S.W.3d 305 (2006).

Termination of a mother's parental rights was proper because the evidence showed that she failed to address her problems with drug abuse, failed at pro-

viding any meaningful proof of employment, and refused to establish proof of a stable living environment for her children. *Long v. Ark. Dep't of Health & Human Servs.*, 369 Ark. 74, 250 S.W.3d 560 (2007).

Ordering terminating the father's parental rights to his two children was affirmed because: (1) termination of the father's parental rights was in the best interests of the children because there was substantial evidence of the strong likelihood that the children would be adopted, there was evidence of potential harm to the children if they were placed in the father's custody, given his drug problems, and it was entirely possible that the children would be left with the father's parents, who were charged with child endangerment; (2) there was clear and convincing evidence of the father's willful failure to maintain meaningful contact with his children because the evidence showed that he was incarcerated for the majority of the time that the children's case was pending, and during the six-month period that he was not in prison, the father only visited his children twice; instead of finding a job in Arkansas, the father moved out of state to seek work; and (3) there was clear and convincing evidence that the department had developed an appropriate permanency plan for the children because it presented evidence that the children were at an adoptable age, they had expressed a desire for stability and permanency, and it had contacted several family matches. *Posey v. Ark. Dep't of Health & Human Servs.*, 370 Ark. 500, 262 S.W.3d 159 (2007).

Department of Human Services established that the father subjected his children to aggravated circumstances based on a finding that he sexually abused them; one child's statements were credible and, along with the other testimony at the hearing, were sufficient to establish that the father perpetrated sexual abuse. *Albright v. Ark. Dep't of Human Servs.*, 97 Ark. App. 277, 248 S.W.3d 498 (2007).

In a termination of parental rights case, a trial court did not err by relying on evidence from prior hearings involving the children because proceedings in these type of cases were cumulative. Even if a trial court was required to take judicial notice and incorporate by reference all prior proceedings, such was done in a case

where a trial court accepted into evidence numerous documents from prior proceedings without objection. *Osborne v. Ark. Dep't of Human Servs.*, 98 Ark. App. 129, 252 S.W.3d 138 (2007).

Order terminating a mother's parental rights to her child was overturned and the case was remanded where subdivision (b)(3)(B)(vii) of this section did not prohibit the trial court's consideration of the mother's recent mental stability; the trial judge's statement that she had to terminate the mother's parental rights if the child was not able to go home with her immediately after the hearing was also incorrect. *Prows v. Ark. Dep't of Health & Human Servs.*, 102 Ark. App. 205, 283 S.W.3d 637 (2008).

Father's parental rights were properly terminated, pursuant to subdivisions (b)(3)(A)(i), (ii), and (b)(3)(B)(i)(a) of this section because the four children were adjudicated dependent-neglected and the father failed to maintain appropriate housing, employment, and transportation and because he exhibited anger problems and had current criminal charges. *Belue v. Ark. Dep't of Human Servs.*, 104 Ark. App. 139, 289 S.W.3d 500 (2008).

Circuit court did not clearly err in finding that the mother's conduct posed a potential harm to the children and that termination was in the children's best interest, because the circuit court was not required to give the mother more time based on a vague hope of improvement, especially where the children had been out of her custody for 14 months, and the mother had a history of drug and alcohol abuse and inconsistent effort to remedy the abuse, and the mother could not predict when her situation would change for the better. *Childress v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 322, 307 S.W.3d 50 (2009).

Judgment terminating a mother's parental rights to her minor children was affirmed because not only was the adoptability requirement of subdivision (b)(3)(A) of this section satisfied by the testimony of the adoption specialist and a caseworker, who said that the children were in pre-adoptive foster placements and that 12 families willing to adopt children had been identified but the mother continued to use drugs and place the children in potential harm. *Davis v. Ark. Dep't*

of Human Servs., 2009 Ark. App. 815, 370 S.W.3d 283 (2009).

Termination of the father's parental rights to his child was appropriate pursuant to subdivisions (b)(3)(A) and (B) of this section because he continued to have contact with the child's mother after her persistent drug use caused her children to be removed from the home. The father further exhibited inappropriate and potentially dangerous anger and impulsiveness and those factors, coupled with the termination of the father's parental rights to the child's sibling under subdivision (b)(3)(B)(ix)(a)(4), provided a sufficient basis for the circuit court's termination decision. *Tadlock v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 821, 373 S.W.3d 361 (2009).

Termination of the father's parental rights was appropriate pursuant to subdivision (b)(3)(A) of this section because it was in the child's best interest. In part, the father had not severed ties with the mother, who was a person with a long-term, unresolved drug problem, and evidence was presented that the father had an inability to control his anger, impulses, and emotions. *Tadlock v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 841, 372 S.W.3d 403 (2009).

There was sufficient evidence of grounds for termination of a father's parental rights because the father's failure to pay court-ordered child support, despite the apparent means to do so, constituted a ground for termination under subdivision (b)(3)(B)(ii)(a) of this section; additionally, the father's failure to comply with court orders, in particular the circuit court's repeated directions that he maintain weekly contact with the Department of Human Services and provide proof of income, demonstrated that factors arose during the case that evidenced his indifference or incapacity to rehabilitate his circumstances. *Banks v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 53 (2010).

Court properly terminated a parent's parental rights under this section as the evidence showed that the child was likely to be adopted by the foster parent and that the child's welfare and safety would be jeopardized if returned to the parent's custody; reunification had been unsuccessful, and the child had been in foster care for three years. *Blakes v. Ark. Dep't of*

Human Servs., 2010 Ark. App. 379, 374 S.W.3d 898 (2010).

Sufficient clear and convincing evidence, as required by subdivision (b)(3) of this section showed that termination of the mother's parental rights was in the best interest of the mother's child as the testimony showed that the child was likely to be adopted and that his mother failed, following incarceration, to show her ability to care for him or maintain stability. *Reed v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 416, 375 S.W.3d 709 (2010).

Sufficient evidence supported a trial court's finding that termination of a father's parental rights, pursuant to subdivisions (b)(3)(B)(i)(a) and (b)(3)(B)(vii)(a) of this section, to his 29-month-old child, was in the child's best interests because the father had abused the mother, suffered from a personality disorder, and admitted to having anger issues; the child had been previously adjudicated as dependent-neglected and had spent all but two months of his life in foster care. *Porter v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 680, 378 S.W.3d 246 (2010).

Although a mother claimed there was a complete lack of evidence supporting the likelihood of her children's adoptability, sufficient evidence supported a trial court's finding that termination of the mother's parental rights was in the children's best interests, pursuant to subdivision (b)(3)(A) of this section, because a caseworker for the Department of Human Services testified there were prospective adoptive parents for the children if parental rights were terminated and someone had already inquired about adopting one child; the evidence of potential harm to the children was overwhelming because the mother failed to complete a drug treatment program, counseling, anger management classes, parenting classes, or drug screening. *Smith v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 747, 379 S.W.3d 663 (2010).

Termination of a mother's parental rights pursuant to this section was supported by clear and convincing evidence as the mother abandoned the mother's child when the mother, who was a minor when the child was born, fled foster care for five to six months, and evidence indicated that the mother's failure to follow a circuit court's orders showed potential harm to

the child. *L.W. v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 44, 380 S.W.3d 489 (2011).

Clear and convincing evidence supported a determination under subdivisions (b)(3)(A) and (B) of this section to terminate a mother's parental rights over her minor children; although she cooperated with the case plan, she made very little progress due to her lack of cognitive ability, inability to reason, and low level of functioning, and she was unable to provide for their basic necessities. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 526, 385 S.W.3d 373 (2011).

Sufficient evidence supported termination of the mother's parental rights under subdivisions (b)(3)(B)(i)(a) and (b)(3)(B)(vii)(a) of this section as she was unable to demonstrate that, once she was released from jail, she would be able to provide a stable home or sufficient income; prior to her incarceration, she had failed to maintain stable and sufficient income; the record was replete with incidents indicating her poor judgment; the children had spent over 75 percent of their lives in foster care; and the mother had been given ample opportunity to correct the problems giving rise to the children's removal from her home and had not done so. *Torres v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 423 (2012).

Appellant's lack of compliance with the case plan and court orders, including his failure to submit to drug screens and testing positive for drugs, as well as his failure to obtain stable housing, employment, or income, supported a grant of termination of parental rights according to the "subsequent other factors" ground under subdivision (b)(3)(B)(vii)(a) of this section. Because there was no meritorious argument that there was insufficient evidence to terminate his parental rights, counsel's motion to withdraw was granted. *Cotton v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 455, 422 S.W.3d 130 (2012).

Trial court did not err in finding clear and convincing evidence of facts warranting termination of appellants' parental rights under subdivision (b)(3) of this section, because the child had been out of the home for 12 months due to unclean conditions and appellants' drug and alcohol abuse, appellants failed to remedy the situation that led to the removal of the

child, and continued instability was hazardous to the child's well-being. *Bryant v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 491 (2012).

Clear and convincing evidence under subdivision (b)(3) of this section supported the termination of a mother's parental rights to her child because the mother lied to the trial court about her continued involvement with the child's father and allowed him to see the child despite orders forbidding such contact. *Duncan v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 13 (2013).

Mother's parental rights were properly terminated because clear and convincing evidence showed (1) the mother's children were adoptable and faced possible harm if returned to the mother, and, (2) if services were provided, the children could not return to the mother in a reasonable time, and it had been found that there was little chance of reunification. *Tatum v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 101 (2013).

Clear evidence supported the trial court's findings of best interests and statutory grounds for termination under subdivision (b)(3)(B)(vii)(a) of this section, given that (1) the child had twice been adjudicated dependent-neglected and had been out of the father's custody for over 12 months, (2) after the child had been returned to the father in 2010, he was found in 2011 associating with known drugs users and tested positive for drugs, and (3) when the child was removed from the father's custody that time, he discontinued efforts to maintain contact with the human services department and he infrequently saw the child. *Smart v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 257 (2013).

Parental rights were properly terminated because the caseworker testified that the children had been out of the home for 12 months, the mother admitted to having a bipolar disorder and failing to stay on medication, and the father failed to adequately understand the potential harm of the mother having unsupervised time with the children. *Drake v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 274, 427 S.W.3d 710 (2013).

Mother's parental rights were properly terminated because the mother was afforded reasonable assistance in meeting the goals of her case plan, she moved away

without informing social services, she failed to attend therapy, counseling, and parenting classes, and she also failed to achieve stable housing and employment. *Hayes v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 294 (2013).

Termination of parental rights was proper, because neither parent was ready for custody of the children after two years and the children were adoptable; the mother failed to follow the court's placement order, and the father tested positive for illegal drugs during the pendency of the case. *Knuckles v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 368, 428 S.W.3d 555 (2013).

Mother's parental rights were properly terminated because the mother had not maintained regular contact with social services, she had not visited regularly with the children, the mother had not submitted to the court-ordered drug and alcohol assessment, and the mother had not submitted to the court-ordered psychological evaluation. *Coleman v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 458 (2013).

Child's siblings had suffered severe abuse while in the care of the parents, and it was clearly not in the child's best interest to be returned to the father's custody, and the trial court was not required to return the child to the father's custody to see if she would also be injured. *Calahan v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 508, 429 S.W.3d 372 (2013).

Trial court erred in terminating the father's parental rights to his four children because his actions did not cause the removal of the children, the mother's abandonment of the children did, and the trial court could not rely on a previous dependency-neglect case involving the father as the sole ground for termination as that matter was successfully resolved and ended with reunification of the children with their parents. *Williams v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 622 (2013).

Appellate court could not say that the trial court abused its discretion in admitting the Texas home study at the parental rights termination hearing as it had been introduced at an earlier hearing and the mother failed to object at the first opportunity; and in any event, any error was harmless because there was sufficient evidence to support termination without con-

sideration of the home study. *Hooks v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 687, 536 S.W.3d 666 (2017).

Failure to Maintain Meaningful Contact.

Circuit court did not clearly err in finding that the mother failed to maintain meaningful contact with the child, and thus termination of the mother's parental rights was proper; in four years, the mother visited the child only once and her claim that she was prevented from visiting the child because of the distance between Arizona and Arkansas failed, as she was able to travel to Arkansas multiple times to attend hearings in this case. *Chastain v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 503, 588 S.W.3d 419 (2019).

Failure to Preserve.

Mother failed to preserve for appellate review her contention that a trial court's decision to terminate her parental rights was improper where the child had achieved permanency through a custodial placement with a relative under § 9-27-338(c). The mother failed to designate the permanency-planning hearing in her notice of appeal, the transcript of the permanency-planning hearing was not in the record, and there was no indication in the transcript of the termination hearing that the mother ever raised this argument before the trial court. *Bryant v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 390, 383 S.W.3d 901 (2011).

Where a mother failed to appeal prior orders in which a trial court determined that the social service agency had made meaningful efforts towards reunification in a parental rights termination proceeding, the issue of whether reasonable efforts were made could not be raised on appeal as it was waived. *Cariker v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 574, 385 S.W.3d 859 (2011).

Appellant putative father could not argue on appeal that the trial court was not authorized to terminate his parental rights as another man had been named as the minor child's legal father due to his marriage to the child's mother because appellant did not raise that issue before the trial court. *Johnson v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 537 (2012).

Mother did not object concerning the adequacy of the services provided by the

department, and the matter was waived. *Weathers v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 142, 433 S.W.3d 271 (2014).

Arkansas Supreme Court has never applied a *Wicks v. State* (270 Ark. 781, 606 S.W.2d 366 (1980)) exception to the contemporaneous-objection requirement in a parental rights termination case when the parents are represented by counsel. *Weathers v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 142, 433 S.W.3d 271 (2014).

In a termination of parental rights case, an argument that the "subsequent factors" statutory ground was not established was not reviewed on appeal because, prior to the termination hearing, the father did not attempt to challenge the findings that appropriate family services had been offered. *Stockstill v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 427, 439 S.W.3d 95 (2014).

In a termination of parental rights case, an alleged father did not waive his challenge to the sufficiency of the evidence supporting the circuit court's findings in a civil bench trial, despite the lack of a motion to dismiss at that level. *Wright v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 676, 449 S.W.3d 721 (2014).

Although the father raised improper service of process in his answer to the termination of parental rights petition, he never raised it again, and his attorney appeared at the termination hearing on his behalf and participated fully without ever objecting to lack of service; therefore, any argument concerning service was waived. *Edwards v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 37, 480 S.W.3d 215 (2016).

To the extent that the father argued that his mother should have been given preference in place of termination of parental rights, the father failed to appeal from the order setting the goal of the case to termination of parental rights and adoption. *Edwards v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 37, 480 S.W.3d 215 (2016).

In a parental rights termination case, a father waived his argument that the Department of Human Services failed to offer him appropriate services. The father had the opportunity to raise the issue at the termination hearing, but did not do so. *Yarbrough v. Ark. Dep't of Human Servs.*,

2016 Ark. App. 429, 501 S.W.3d 839 (2016).

Mother's failures to challenge the failure to remedy finding prevented the appellate court from considering the mother's meaningful-efforts argument with respect to the termination of her parental rights to her oldest child. *Taylor v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 453, 503 S.W.3d 813 (2016).

Mother's claim that the Department of Human Services failed to make meaningful efforts to reunite the family was not preserved for review as she had not appealed from an earlier permanency-planning order finding reasonable efforts and did not object at the termination hearing. *Phillips v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 565, 567 S.W.3d 502 (2018).

Failure to Remedy.

Trial court did not err in finding that a mother failed to remedy the conditions that caused removal of the children; although the Department of Human Services contributed to the delay in receiving some services, the mother took no responsibility for her actions in thwarting the attempt to contact her and failing to participate in services she had started. *Tillman v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 119 (2015).

Trial court properly found that the mother manifested incapacity or indifference to remedy the issues that led to the children's removal where she failed to take advantage of the drug treatment programs offered, and she had 14 months to remedy her situation. *Tillman v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 119 (2015).

Circuit court's termination of a mother's parental rights based on the 12-month failure to remedy ground was not clearly erroneous where the mother failed to provide a safe and stable environment for the child's essential needs for over 17 months, and although the mother was incarcerated at the time of the child's removal from the grandmother's home, she had been incarcerated only one week prior to the child's removal. *Forbes v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 508, 504 S.W.3d 663 (2016).

Circuit court did not err in determining that termination of a mother's parental rights was proper where the conditions

that led to the child's removal, i.e., numerous unexplained injuries on the child's body, his fear of the mother, and the concerns for his safety, had not been remedied. *Rodgers v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 569, 506 S.W.3d 907 (2016).

Trial court's decision to terminate parental rights on the failure to remedy ground was not clearly erroneous; despite their completion of some services and partial compliance with the case plan, a trial home placement with three of the older children had failed and resulted in the subsequent removal of all four children for recurring environmental neglect, the parents had disregarded multiple warnings received throughout the case regarding the condition of the home and the health of the children, and they hesitated to cooperate with the department or ask for help when needed. *Bean v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 77, 513 S.W.3d 859 (2017).

Mother failed to remedy the conditions that caused removal of the child where the caseworkers' testimony showed her inability to discipline her 17-year-old son, she was repeating that pattern with the second child, and despite years of parenting classes, her parenting skills had not improved. *Jones v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 125, 515 S.W.3d 151 (2017).

Although the mother had completed a large portion of her case plan (including overcoming drug addiction), the two failed trial home placements, her disregard of offered parenting skills throughout the case, as well as her hesitation to ask for help when needed and surrounded by various service providers demonstrated her inability to remedy the conditions that caused removal. *Jones v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 125, 515 S.W.3d 151 (2017).

In a parental rights termination case, the trial court did not err in finding that the parents failed to remedy; although they had achieved sobriety, acquired jobs, and had adequate income and reliable transportation, they failed to remedy the last element that warranted removal, i.e., a lack of stable housing. *Selsor v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 182, 516 S.W.3d 314 (2017).

Trial court made a mistake in concluding that the statutory "failure to remedy"

ground was proved by clear and convincing evidence with respect to the mother because the family service worker stated that she had never been to the mother's home and had no idea if it was clean or stable; the Department of Human Services provided no evidence on which to base a conclusion that the father was doing anything the mother needed to protect the children from. *Choate v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 319, 522 S.W.3d 156 (2017).

Trial court clearly erred in finding that statutory grounds for termination of a father's parental rights were proved because the statutory "failure to remedy" ground was not proved by clear and convincing evidence; at worst, it was established that a family service worker did not know whether the father's housing and employment were stable, and at best, it was established that the father had lived in the same home since before the parties divorced and had worked at a job for at least a year. *Choate v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 319, 522 S.W.3d 156 (2017).

In a termination of parental rights case, the appellate court found no reversible error in the circuit court's finding that a father's continued pattern of violence, arrests, and instability constituted a failure to remedy those conditions. *Blasingame v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 71, 542 S.W.3d 873 (2018).

Termination of the mother's parental rights as to all four children on the failure to remedy ground under this section was affirmed; one child was clearly adjudicated dependent-neglected and had been removed in part due to the mother's failure to protect him from sexual abuse by the father, the triplets were removed based on the same failure to protect their sibling, and the mother invited any error in the adjudication of dependency-neglect as to the triplets. *Parnell v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 108, 538 S.W.3d 264 (2018) (sub. op. on reh'g).

Termination of the mother's parental rights was proper because she did not remedy the condition that caused removal — her homelessness; and, although she had secured an apartment, signed a lease, paid a deposit, and lacked only having the utilities turned on, she still had not moved into the apartment; and because, although the mother contended that the

efforts of the Department of Human Services (DHS) to help remedy her homelessness were not meaningful, her caseworker testified that one of DHS's requirements for providing cash assistance for housing was that the parent demonstrate an ability to maintain the home without DHS's support, and the mother never showed that ability based on an inconsistent employment history. *Garlington v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 124, 542 S.W.3d 917 (2018).

Termination of the mother's parental rights to two of her children was proper based on the failure to remedy ground because one of the conditions that caused removal was that the mother was under the influence of illegal drugs while in the presence of the juveniles, and, despite numerous services throughout the case, that remained true; and the circuit court's failure to make a finding regarding the effect of termination on the familial relationship with a sibling who was not in the custody of the Department of Human Services, when there was never any court order in place allowing the children to visit with the sibling, was not reversible error. *Rice v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 141, 572 S.W.3d 907 (2019).

Circuit court did not clearly err in terminating parents' parental rights for failure to remedy because the parents' environmental neglect was the primary risk to the children's health, safety, and welfare that caused the Department of Human Services to get involved with the family, and the evidence established that the parents, despite 18 months of services from the department, were never able to keep their home clean on a consistent basis. *Boomhower v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 397, 587 S.W.3d 231 (2019).

Circuit court did not clearly err in terminating the mother's parental rights pursuant to the failure to remedy ground; although the circuit court found that the mother had benefited somewhat from services, after 18 months of services, she could not safely be reunited with her children because she failed to acknowledge the violence and volatility that continued in her home, and she continued to minimize her boyfriend's violent behavior. *Davis v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 406, 587 S.W.3d 577 (2019).

Circuit court did not clearly err in terminating the mother's parental rights under the failure to remedy statutory ground for persistent environmental neglect because the Department of Human Services caseworker observed feces and urine on the floor; trash, laundry, and dishes throughout the house; and wires, chemicals, tools, and cigarette butts that the children could access; and, although the parents had the ability to get the home clean and did so at times, they failed to demonstrate that they were capable of keeping the home clean. *Morris v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 411, 586 S.W.3d 203 (2019).

Appellate court agreed with the mother's counsel that an appeal from the trial court's decision to terminate the mother's parental rights would be without merit because she testified that she continued to test positive for methamphetamine throughout the case despite treatment made available to her. *Adame v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 248, 601 S.W.3d 432 (2020).

It was not erroneous to apply the custodial-parent failure to remedy ground to a father because there was no dispute that the children were in the physical care and custody of both the father and the mother when they were removed. *Locke v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 385 (2020).

Termination of a father's parental rights on the failure to remedy ground was appropriate because clear and convincing evidence supported the circuit court's finding that the father failed to remedy the cause of removal of his children, namely, a lack of safe, stable housing; on the day of the termination hearing, the father had no home of his own and was planning to move out of the state. *Locke v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 385 (2020).

Failure to Support.

Trial court's decision to terminate a father's parental rights to his son on the ground that he willfully failed to provide significant material support was not clearly erroneous because the father was ordered to pay child support, but he failed to make any payments of child support. *Rodgers v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 299 (2015).

Ground for termination set forth in subdivision (b)(3)(B)(ii) of this section merely

provides that the juvenile live outside the home of the parent for 12 months; it does not require that the child be removed from the custody of the parent as required by the ground found in subdivision (b)(3)(B)(i). *Rodgers v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 299 (2015).

Father.

Alleged father's right to his presumptive child should not have been terminated because, when the circuit court in effect voided a default paternity order and determined that the alleged father was not the biological father, all references and connections to the alleged father should have been removed from the case. The alleged father could not have been the presumptive legal father or even a putative father. *Wright v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 676, 449 S.W.3d 721 (2014).

Circuit court erred in terminating a putative father's parental rights where it had found that his three hour-long visits with the child did not establish any parental rights, and thus it was error to terminate parental rights it found to be nonexistent. *Whitehead v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 42, 481 S.W.3d 469 (2016).

Although not initially included, appellant was added as a party and deemed by the circuit court to be the child's legal father because the child was conceived while appellant was married to the mother; the circuit court also deemed another man to be the child's legal father because he was listed on the birth certificate and was found to be the biological father through a paternity test. However, a review of case law from other jurisdictions showed a consensus that a child can have only one legal father and the Court of Appeals found those decisions to be persuasive. *Howerton v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 560, 506 S.W.3d 872 (2016).

Appellant could not be the child's legal father—presumptive or otherwise—once the circuit court found that another man was the legal father. By finding another man to be the child's legal father, the circuit court effectively divested appellant of all parental rights. Thus, the circuit court's ruling terminating appellant's parental rights was clearly erroneous because he had no rights. *Howerton v. Ark.*

Dep't of Human Servs., 2016 Ark. App. 560, 506 S.W.3d 872 (2016).

Circuit court's order dismissing a putative father from a case seeking termination of parental rights was affirmed where he had waived his claim-preclusion and notice arguments by failing to raise them below, and the court had followed the proper procedure by dismissing him from the case once it determined that he was not the child's legal or biological father. *Manohar v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 482, 528 S.W.3d 881 (2017).

Trial court erred in terminating appellant's parental rights because there was no evidence that appellant's status as a "legal father" fell within the statutory definition of a parent for purposes of the aggravated-circumstances ground for termination. There was no evidence that appellant had been found by the court to be the biological father of the child; although the appellate court did have a finding by the trial court that appellant was the "legal father" of the child, the appellate court could not ascertain on what basis that determination was made; and the trial court's orders frequently exchanged the terms "legal father" and "putative father" when referring to both appellant and another "father" identified in the case. *Tovias v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 228, 575 S.W.3d 621 (2019).

Where appellant argued only that DHS had not established that he was a "parent" and that DHS failed to offer sufficient proof that he was married to the mother when the child was born, the circuit court's decision terminating his parental rights was not clearly erroneous; the circuit court had found the appellant to be the "non-custodial parent who was a legal parent" in the adjudication order and appellant did not appeal that order; a family service worker testified at the termination hearing that from her understanding the child was born during the marriage, and the appellant's attorney ad litem stated that she had recognized the "legal issue and those potential consequences" of a DNA test and that the appellant had declined the test. *Thacker v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 379, 585 S.W.3d 698 (2019).

Findings.

An adjudication of dependency and neglect finding by a juvenile court referee is sufficient to satisfy this section. *Hutton v. Ark. Dep't of Human Servs.*, 303 Ark. 512, 798 S.W.2d 418 (1990).

Finding parent was unable to be the type of parent child needed, and that parent was not able to learn how to be such a parent, was a sufficient finding by clear and convincing evidence of parent's unfitness to support termination of parental rights. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

Even if the statute does not permit a termination petition to be filed until a child has been out of the home for 12 months, any error that might have occurred when a petition was filed after 11 months was cured where the hearing did not occur until the child had been out of the home for over 14 months. *Donna S. v. Ark. Dep't of Human Servs.*, 61 Ark. App. 235, 966 S.W.2d 919 (1998).

Subdivision (b)(3)(B)(i)(a) of this section does not require a second dependency-neglect adjudication at the final hearing; it simply requires the Department of Human Services to prove that the children have been adjudicated dependent-neglected. *Bearden v. State Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

Appellate court dismissed father's appeal of the decision finding that his son was dependent-neglected as moot where father had not appealed a subsequent ruling that terminated his parental rights; this section no longer required a dependent-neglected adjudication before parental rights are terminated. *Masters v. Ark. Dep't of Human Servs.*, 95 Ark. App. 375, 237 S.W.3d 125 (2006).

Termination of the father's parental rights to his son was appropriate under this section because the father failed to prove that he was able to provide for one of his son's most basic needs, which was a stable home environment. The trial court was not required to ignore the fact that the father and his wife had a long history of a volatile relationship and the father failed to finish his anger-management course until after the permanency-planning hearing, and only two months prior to the termination hearing. *Latham v.*

Ark. Dep't of Health & Human Servs., 99 Ark. App. 25, 256 S.W.3d 543 (2007).

The Department of Human Services (DHS) engaged in meaningful efforts to rehabilitate a parent and reunify the parent's family, as provided in subdivision (b)(3)(B)(i)(a) of this section; while DHS did not initially provide adequate services, it provided services and referrals for a full year prior to a termination hearing, and during that year, the parent either failed to take advantage of the services or participated in them inconsistently. *Taylor v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 362 (2010).

Trial court did not clearly err in finding clear and convincing evidence of grounds to terminate the parental rights of a mother and father under this section because they failed to remedy the causes for removal and demonstrated an incapacity or indifference to remedying the problems that prevented return of their children; the father failed to comply with the case plan, demonstrated poor judgment in remaining with the mother, and failed to establish any stable housing or employment, and the mother was unable or unwilling to discontinue drug use, she failed to attend counseling until the petition to terminate was filed, she never held a steady job, she failed to pay court-ordered child support, she failed to establish proper housing, and her psychological evaluation demonstrated that she was a multi-drug abuser and that she had a borderline personality disorder. *Vance v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 778 (2010).

There was no issue of arguable merit as to whether termination of the parental rights of a mother and father was in their children's best interest because the trial court clearly considered both parts of the two-part inquiry that required consideration of the potential harm to the children if returned to the parents and the likelihood of adoption in deciding termination was in the children's best interest; there was potential harm because the mother and father had no employment or home, and at least one of them had significant drug and psychological problems, and the children were deemed adoptable, even as a sibling pair. *Vance v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 778 (2010).

Termination of the mother's parental rights to her daughter was proper under

this section because the mother failed to maintain stable housing, her continuing drug use showed both an indifference to remedying the problems plaguing the family and the potential hardship to the child, and it was unclear how long it would take the mother to overcome her problem. *Welch v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 798, 378 S.W.3d 290 (2010).

Termination of the father's parental rights was appropriate because case law supported the finding that his failure to comply with the court orders and case plan were sufficient evidence of other factors arising subsequent to the filing of the original petition. Further, his post-removal decision not to take advantage of services showed his incapacity or indifference to rehabilitate his circumstances; his failure to comply with court orders constituted sufficient evidence under the statute. *Clements v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 493 (2013).

Termination of the father's parental rights was appropriate because the circuit court relied on the appropriate statutory ground in terminating the father's parental rights and that ground was alleged in the petition. Even though the circuit court failed to check the blank for "other factors" on its form order terminating appellant's parental rights, it circled "parents" within that section and indicated by handwritten remarks appropriate family services applicable to both parents were offered. *Clements v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 493 (2013).

Under subdivision (b)(3)(B) of this section, only one ground was necessary to terminate parental rights, but the trial court did not err in finding that the mother's driving under the influence conviction was a subsequent issue that showed placement of the child in the mother's custody was contrary to the child's healthy and safety. *Aguilera v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 503 (2013).

Father's parental rights were properly terminated because his child was adjudicated dependent-neglected in 2012 due to parental unfitness, the father was incapable or indifferent to remedying the issues or factors or rehabilitating his circumstances despite the provision of appropriate services, the father lacked any income or suitable home, had not

resolved his criminal issues, and his incarceration effectively prevented any benefit from the services to which he had access. *Washington v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 293 (2014).

Language of the circuit court's order plainly tracked the language of the statute on subsequent factors and aggravated circumstances, and defendant cited no authority for the proposition that the circuit court's order had to specifically recite the subsection number of the statutory provision on which the circuit court relied. *Jackson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 440, 503 S.W.3d 122 (2016).

Circuit court found that the Department of Human Services had proven six grounds supporting termination despite the fact that the department alleged only three grounds in its petition; this was not a meritorious ground for reversal, however, because only one ground needed to be proven to support termination, and the circuit court found that the department proved all three grounds alleged in the termination petition. *McGaugh v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 485, 505 S.W.3d 227 (2016).

Frivolous Appeal.

Where the children were removed from the mother's home after the youngest child died, allegations of sexual abuse arose and the court found the children dependent-neglected as a result of inadequate supervision; the mother's appeal of the decision terminating her parental rights for failure to remedy the cause of removal, nonsupport, and subjecting the children to aggravated circumstances lacked merit. The court found that termination was in the children's best interest. *Gregory v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 420 (2013).

Mother's counsel properly found that there was no meritorious basis upon which to argue that the evidence was insufficient to support the termination of her parental rights because, although the mother had completed many services, she had not maintained stable housing or employment, and she disobeyed the court's orders regarding her boyfriend. *Watson v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 28 (2014).

In a termination of parental rights case, counsel was allowed to withdraw because

an appeal by a father would have been wholly without merit; the child had been in the custody of an agency for almost 16 months, and the father was incarcerated during most of the child's life. Moreover, the child would have continued in foster care significantly longer if the father had maintained his parental rights, and the trial court's finding of adoptability was supported by testimony from an adoption specialist. *Criswell v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 255, 435 S.W.3d 26 (2014).

Trial court properly terminated a father's parental rights and his counsel could withdraw because it was in the child's best interest to terminate his parental rights where his appeal lacked merit, the child was adjudicated dependent-neglected, the father had not maintained contact with the Department of Human Services, had not visited with the child, had not attended drug-and-alcohol assessments or hair-follicle testing, had not resolved all criminal matters, and had not remained drug free. *Freeman v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 366 (2014).

Counsel complied with the requirements for no-merit appeals in termination cases, and the court granted counsel's motion to withdraw after finding the appeal without merit. *Holmes v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 482 (2014). Accord *Horton v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 370 (2014); *Duncan v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 489 (2014); *White v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 506 (2014); *Young v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 602 (2014); *McPherson v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 621 (2014); *Windom v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 629 (2014); *Spencer v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 670 (2014); *Murphree v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 677 (2014); *Kilmer v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 694 (2014); *Jones v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 735 (2014).

Mother's counsel was allowed, under Ark. Sup. Ct. R. 6-9(i)(1), to withdraw from a termination-of-parental-rights appeal, under subdivision (b)(3)(B)(vii)(a) of this section, despite failing to mention an overruled evidentiary objection, because an appeal was frivolous, as (1) the mother

tested positive for drugs, did not appear for required drug screening, moved without notice, had not seen the children in over six months due to failure to pass a drug test, and (2) the evidence supported the trial court's best-interest finding. *Poss v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 514, 443 S.W.3d 594 (2014).

Father's counsel was not allowed, under Ark. Sup. Ct. R. 6-9(i)(1), to withdraw from a termination of parental rights appeal because (1) the father was not offered services, and (2) an arguable issue existed as to erroneous termination under subdivisions (b)(3)(B)(i)(a) and (vii)(a) of this section, since the father's incarceration was no cause for removal nor a subsequent "other factors or issues" ground. *Poss v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 514, 443 S.W.3d 594 (2014).

Mother's appeal from the circuit court's decision to terminate her parental rights was wholly without merit and therefore frivolous. Because the mother's counsel complied with *Linker-Flores v. Arkansas Dep't of Human Services* and the appellate court's rules, the termination order and counsel's motion to withdraw were upheld. *McDonald v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 277 (2015). Accord *Studway v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 365 (2015); *Morin v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 695, 477 S.W.3d 548 (2015).

Trial court granted the termination petition, counsel stated there were no issues of arguable merit for appeal, and the appeal was found to be wholly without merit; the mother admitted using drugs shortly before giving birth to the child, and there was testimony that she had not worked diligently towards reunification or made an effort to maintain sobriety. *Qualls v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 371 (2015).

In a termination of parental rights case, the mother's and the father's appeals were wholly without merit because the trial court found by clear and convincing evidence that the Department of Human Services proved that the parents had their parental rights to another child involuntarily terminated. *Abraham v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 491 (2017).

In a termination of parental rights case in which the father's counsel filed a motion to be relieved as counsel and a no-

merit brief, counsel's motion to withdraw was denied and rebriefing was ordered as counsel's brief did not adequately address all of the adverse rulings. Counsel did not address why challenging the aggravated-circumstances finding based on little likelihood of successful reunification was without merit; a finding of aggravated circumstances applies only to a "parent", but counsel did not address why challenging the aggravated-circumstances finding based on the father's putative-father status at the time of the adjudication was without merit; and counsel failed to address the alternative grounds for termination. *Kloss v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 121 (2019).

Grandparents.

A grandmother's visitation and custody rights were derivative of her daughter's parental rights, and, as a result, were terminated when her daughter's parental rights were terminated. *Suster v. Ark. Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

No error in refusing to place the children with the maternal grandmother when the evidence revealed an indifference to the children's welfare on her part. *Baker v. Ark. Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

Termination of appellant father's parental rights was not in his daughter's best interests because termination of the father's parental rights endangered his daughter's relationship with her paternal grandmother, in light of subdivision (c)(1) of this section. The circuit court found that relationship to be the most stable influence on the daughter. *Caldwell v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 102 (2010).

Termination of parental rights results in termination of all other familial rights flowing through that parent, pursuant to subdivision (c)(1) of this section. *Caldwell v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 102 (2010).

Trial court's decision to terminate a mother's parental rights was not clearly erroneous because the maternal grandmother's home did not meet all relevant child-protection standards, and placement in her home would not be in the children's best interests since the grandmother was married to a man who indicated that he did not want the children

and had been accused of child maltreatment; the mother failed to demonstrate how the termination of her parental rights would completely remove the possibility that the grandmother could be a placement for the child because there was no indication that the grandmother would be ineligible to adopt the children if she met all of the necessary requirements. *Davis v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 469, 375 S.W.3d 721 (2010), overruled, *Ellis v. Ark. Dep't of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

Termination of the parents' parental rights to their daughter was appropriate because the issue before the circuit court at the termination hearing was a petition for termination of parental rights and not a custody, guardianship, or adoption petition. The parents failed to advance any new or persuasive argument that a grandmother's willingness to care for the child somehow precluded the termination of their parental rights. *Ogden v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 577 (2012).

In a case in which the circuit court erroneously decided to forego a relative-placement option with the grandparents in favor of terminating the mother's parental rights, the Department of Human Services erred in saying that the grandparents could later become an adoptive placement for the children if they were able to meet all the necessary child protection standards and successfully petition to adopt the children because the grandparents were not parties to the termination of parental rights case and would not have standing to intervene as a matter of right in a subsequent adoption proceeding should the termination be affirmed; and, if the children were not placed with the grandparents now, it was unlikely the court would allow them to adopt the children later. *Clark v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 223, 575 S.W.3d 578 (2019).

Grounds.

Evidence was sufficient to find that the Department of Human Services made a meaningful effort to rehabilitate the home, that the conditions which caused removal had not been remedied by the parent, and that grounds for the termination of parental rights were proven by clear and convincing evidence. *Beeson v.*

Ark. Dep't of Human Servs., 37 Ark. App. 12, 823 S.W.2d 912 (1992).

Father's parental rights were terminated where there was clear and convincing evidence that the two sons lived apart from the father for 12 months and that he failed to provide monetary support for them or to make sufficient contact with them. *Crawford v. Ark. Dep't of Human Servs.*, 330 Ark. 152, 951 S.W.2d 310 (1997).

Rights may be terminated if the juvenile has lived outside the home of the parent for 12 months and the parent has willfully failed to provide significant material support to his child as ordered by the chancery court and to have meaningful contact with him. *Wade v. Ark. Dep't of Human Servs.*, 337 Ark. 353, 990 S.W.2d 509 (1999).

Termination appropriate where mother failed to show any consistent improvements in terms of visitation, employment, or housing, and her pattern of inconsistent visitation continued to harm her children even while they were not in her custody. *Baker v. Ark. Dep't of Human Servs.*, 340 Ark. 42, 8 S.W.3d 499 (2000).

Clear and convincing evidence supported the termination of the appellant's parental rights where she had 18 months between the permanency planning hearing and the termination hearing to rehabilitate and correct the conditions that caused removal, but failed to provide a home and to demonstrate the ability to adequately parent the children even after receiving reasonable, rehabilitative services for over three years. *Moore v. Ark. Dep't of Human Servs.*, 69 Ark. App. 1, 9 S.W.3d 531 (2000).

Father's rights to his children were not terminated because he was incarcerated, but rather because the statutory requirements for termination were met by clear and convincing evidence; the children had been adjudicated dependent-neglected, had been out of the home for more than 12 months, and the Department of Human Services made a meaningful effort to rehabilitate the home and correct the conditions that caused removal, but despite that effort, the father did not remedy those conditions. *Johnson v. Ark. Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002).

Trial court erred in terminating parents' rights to their new-born daughter

based solely on the fact that the parents' rights to an older sibling had previously been terminated; while the prior termination satisfied subdivision (b)(3)(B)(ix)(a)(4) of this section, such action still required a finding that termination was in the best interests of the child, and the prior termination, standing alone, was not sufficient to support such a finding. *Conn v. Ark. Dep't of Human Servs.*, 79 Ark. App. 195, 85 S.W.3d 558 (2002).

Where a child was left partially paralyzed from a second incident of abuse committed by the mother's boyfriend, the mother was badly mistaken in the belief that her parental rights could not be terminated where the mother had complied with an earlier case plan and did not personally injure child, as it was the mother's duty to take affirmative steps to protect the child from harm. *Wright v. Ark. Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003).

Trial court gave proper weight to the child's wishes when considering a termination petition; there was no error where the trial court found that the child's wishes were not the controlling factor in its decision to terminate the mother's parental rights. *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004).

Where appellant mother did little to disassociate herself with an abusive man who struck her son across the face hard enough to leave marks, the trial court properly terminated her parental rights. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Nothing in § 9-27-338 prohibited the trial court from holding a permanency planning hearing immediately, given that it had already provided notice of no reunification and the DHS's petition to terminate; in addition, the trial court's subsequent termination of the parents' parental rights was not error when, under this section, the fact that the parents had had their parental rights terminated as to their other children was an immediate ground for termination. *Phillips v. Ark. Dep't of Human Servs.*, 85 Ark. App. 450, 158 S.W.3d 691 (2004) (decided in part under prior version of § 9-27-341).

Parental rights were properly terminated where, although the children were not physically beaten, the parents physically endangered the children with a lack

of medication, lack of heat, and exposure to items that could have seriously injured or killed them, such as plastic bags in the baby's crib, sharp knives on the floor, and a foot-long rat in the house; in addition, the parents demonstrated a lack of motivation to comply with the case plan by failing to maintain employment and complete classes, and the mother lacked a bond with two of the older children. *Browning v. Ark. Dep't of Human Servs.*, 85 Ark. App. 495, 157 S.W.3d 540 (2004).

Parents' parental rights were properly terminated where, pursuant to subdivision (b)(3)(B)(ix)(a)(4) of this section, the parents' rights as to one child were terminated based upon the fact that their parental rights had been terminated as to another child. *Browning v. Ark. Dep't of Human Servs.*, 85 Ark. App. 495, 157 S.W.3d 540 (2004).

Court properly terminated mother's parental rights where the mother failed to maintain meaningful contact with the child by moving to California prior to her adjudication hearing and, although the mother was offered services by the state during the pendency of the case, she refused to return to the state or avail herself of the services; moreover, while in California, the mother failed to maintain steady employment, never established her own residence, and moved in and out of her mother's apartment, which was found to be unsuitable in a California home study. *Mayfield v. Ark. Dep't of Human Servs.*, 88 Ark. App. 334, 198 S.W.3d 541 (2004).

Mother's parental rights were properly terminated on the basis of her incapacity or indifference to remedy subsequent issues where she married a convicted sex offender who could not have unsupervised contact with minors, she did not maintain stable employment, and she stopped taking her medication; further, the children had been out of the home for at least 12 months and it was not until the end of the case, with the termination hearing looming near, that the mother began to take active steps to comply with the case plan. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005).

Court properly terminated a mother's parental rights where she repeatedly missed her appointments with her various doctors, and she could not budget her money, such that she routinely ran out of

food in the middle of the month, but she maintained cable TV; the mother was given ample time to correct her situation and it was in the child's best interests to be placed for adoption because the child was six years old when the proceedings began and, when termination was granted, she was nearly nine. *Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

Termination of mother's parental rights was proper as statutory grounds existed for the termination, including educational neglect and failure to protect, and evidence supported the trial court's finding that termination was in the children's best interest. *Linker-Flores v. Ark. Dep't of Human Servs.*, 364 Ark. 224, 217 S.W.3d 107 (2005).

There was clear and convincing evidence to terminate father's parental rights where the four children had been adjudicated dependent-neglected and were out of the home for approximately 17 months, the father lacked stable housing and stable employment, he failed to comply with court orders to provide child support and, although he completed alcohol and drug inpatient treatment, as well as parenting classes and visitation, he repeatedly failed to comply with the circuit court's orders. *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, 217 S.W.3d 788 (2005).

Although it was very clear that the Department of Human Services did not follow the spirit or letter of the mandate in offering reunification services to a mother, the court could not say that, under the evidence presented at the termination hearing, it was reversible error to terminate the mother's rights without ordering further services to her, despite the outrageous and contemptuous conduct of the department, where the children had been out of the home for approximately three years and they could not have been returned to the home in a reasonable amount of time, and where the mother failed a drug test following a first review hearing after remand and she refused all subsequent drug tests. *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

Trial court did not err in finding that the father had failed to maintain meaningful contact with his child and in terminating the father's parental rights to the

child as (1) by the father's own testimony, it was established that his contact with his son was limited to a single two-week period; and (2) while it was true that the father was incarcerated for a portion of that time, there was other evidence that the father chose not to be a part of the child's life because he absented himself from the child's life as soon as he found out that the mother was pregnant and did not return until some three or four years later. *Moore v. Ark. Dep't of Human Servs.*, 95 Ark. App. 138, 234 S.W.3d 883 (2006).

Order terminating mother's parental rights to her three children was upheld as the trial court did not err in placing the oldest child in the custody of a family friend; § 9-27-338(c) clearly anticipated that one of the "goals" could be a plan for permanent custody. *Griffin v. Ark. Dep't of Health and Human Servs.*, 95 Ark. App. 322, 236 S.W.3d 570 (2006).

Order terminating parents' rights to their three children was upheld where the parents subjected the children to aggravated circumstances, as provided in subdivision (b)(3)(B)(ix)(a)(3) of this section, and the mother's deep-seated psychological problems prevented her from becoming a fit parent in that they caused her to refuse to accept responsibility for her actions; the trial court did not err in finding, pursuant to § 9-27-303(6), that there was little likelihood that services to the family would result in successful reunification. *Yarborough v. Ark. Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006).

Order terminating a father's parental rights was upheld because any error resulting from the premature filing of the termination petition was cured once the 12-month time threshold was satisfied; because the child was placed in foster care on April 18, 2005, and the termination order was not entered until May 3, 2006, the child had been out of the father's custody for over one year. *Riley v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 235, 253 S.W.3d 928 (2007).

According to the Arkansas Supreme Court's interpretation of the temporal mandate in this section, the clock commences on the date the child is removed from the home and does not stop until the termination of parental rights order is entered. *Riley v. Ark. Dep't of Health &*

Human Servs., 98 Ark. App. 235, 253 S.W.3d 928 (2007).

Termination of parental rights was proper due to aggravated circumstances because the mother engaged in repeated cruelty to the children by striking them, she left Arkansas and returned to Louisiana, despite the fact that she knew Louisiana was unable to provide necessary services to her, she was not credible in her testimony concerning her inability to complete basic case-plan goals, such as obtaining housing and employment, and she had remained unemployed over the previous two years. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Termination of a mother's parental rights was proper because a caseworker testified that in her opinion it was in the children's best interests to terminate the parental rights and to allow the children to have an opportunity to "unlearn" their aggressive, destructive behaviors. She explained that she had interacted with them and that they were sweet children, and she thought "working with the children with their therapy ... that they can be adopted." *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Mother's parental rights were terminated where, pursuant to subdivision (a)(3) of this section, the legislature's overriding intent was to protect the best interest of the child; while the mother attempted to be a parent, she was not able to be, and improvement and compliance toward the end of a case plan would not necessarily bar termination of parental rights. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007).

Termination of the parents' parental rights to their children was proper under subsection (b) of this section because the trial court had before it clear and convincing evidence of the children's abuse. *Williams v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 95, 257 S.W.3d 574 (2007).

Clear and convincing evidence warranted a termination of parental rights where the evidence showed that a father left bruises and bite marks on his children, viewed pornography, abused their mother, refused to attend counseling, and failed to pay child support; it was not

necessary to address the father's argument regarding the lack of findings of sexual abuse because there was sufficient evidence to support the finding that the children had been adjudicated dependent-neglected and remained out of his custody for more than 12 months. The father did not argue that services were not provided to him; he argued that there were services that could have been provided, but were not. *Hall v. Ark. Dep't of Human Servs.*, 101 Ark. App. 417, 278 S.W.3d 609 (2008).

Termination of parental rights was appropriate because despite the fact that parents complied with the case plan and with trial court orders, they were still not capable of caring for the children; the mother had not accepted responsibility for the removal, had not addressed environmental issues, and would reconnect with the father, and the father was unwilling to admit fault, was abusive and was incarcerated. In addition, the children had been removed from their parents' care for a period in excess of 12 months. *Lee v. Ark. Dep't of Human Servs.*, 102 Ark. App. 337, 285 S.W.3d 277 (2008).

Mother's parental rights were improperly terminated, under this section, where the facts warranting the termination were not proven by clear and convincing evidence; the mother maintained some type of housing, although it was not a fixed location, and the residences were not unsafe or inappropriate for her two children. *Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, 287 S.W.3d 633 (2008).

Father's partial compliance with certain aspects of a case plan did not warrant reversal of a termination order because his compliance did not make him capable of caring for his children. *Belue v. Ark. Dep't of Human Servs.*, 104 Ark. App. 139, 289 S.W.3d 500 (2008).

Termination of parental rights was warranted under this section because the parents lacked the mental capacity to raise a child and because, despite meaningful services, the parents were unable to remedy the circumstances that caused the removal of the child within one year. *Dowdy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 180, 314 S.W.3d 722 (2009).

Trial court found aggravated circumstances in the mother's case by her guilty plea to manslaughter in the death of one of the children, her failure to report the sexual abuse of another child by her hus-

band, her failure to obtain medical or psychological help for her daughter after the abuse, and her continuing to have sexual relations with the abuser after she learned of her daughter's abuse; there was little likelihood that services to the family would result in successful reunification under this section. *Vasquez v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 575, 337 S.W.3d 552 (2009).

Trial court properly terminated the mother's parental rights under subdivisions (b)(3)(A) and (B) of this section, where the mother abandoned her children for 11 months and was unwilling to place their needs ahead of her own. *Ridley v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 618 (2009).

Circuit court did not clearly err in finding that termination of parental rights was in four children's best interest where the court considered the potential harm in returning the children, their mother exposed them to pornography and gave them alcohol, the mother's husband raped the six-year-old, the mother failed to get a job or suitable housing, and the mother was pregnant with another child the mother could not support at the time of the termination hearing. *Thomsen v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 687, 370 S.W.3d 842 (2009).

Although a father had taken all the recommended classes, maintained employment, stayed drug-free, and had a decent living environment, a trial court did not err in emphasizing the child's distress when his father was around and in terminating the father's rights pursuant to subdivision (b)(3)(B)(i)(a) of this section. *Bearden v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 754, 351 S.W.3d 186 (2009).

Trial court properly found that termination of parental rights was in the child's best interest and that grounds existed pursuant to subdivisions (b)(3)(B)(i)(a), (ii)(a) and (vii)(a) of this section, including that the parents remained unable or unwilling to appreciate the nutritional and medical needs of the child. *Davis v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 872 (2009).

Termination of the mother's parental rights was appropriate pursuant to subdivisions (b)(3)(B)(i), (ii), (vii), and (viii) of this section because she was still, after all of the services she received, unable to

provide a stable home for the child. At the time of the termination, the mother was incarcerated and unable to care for the child or achieve stability in a time frame consistent with the child's needs; further, the child had been out of her mother's custody for more than half of her young life. *Ramsey v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 1365, 377 S.W.3d 399 (2010).

Circuit court did not clearly err in considering the potential-harm factor of subdivision (b)(3)(A)(ii) of this section or in finding that termination of a father's parental rights was in the child's best interest because the father lacked stable housing, which was evidenced by the fact that home studies on his and his mother's residences were denied, he provided no proof of a stable income despite several court orders to do so, and he had paid only a fraction of the court-ordered child support, despite his claim of having substantial earnings; the father's lack of stable housing and income and his failure to pay child support were contrary to the child's best interest. *Banks v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 53 (2010).

Although, in cases of termination of parental rights, the circuit court considers the likelihood that the child would be adopted and the potential harm that could arise from returning the child into the parent's custody, pursuant to subdivision (b)(3)(A) of this section, that portion of the statute was inapplicable because appellant father's child was not being placed for adoption. Rather, the child was in the custody of her mother. *Caldwell v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 102 (2010).

Trial court did not err in terminating a mother's rights to her three children after 19 months in custody under subdivision (b)(3)(B)(vii)(a) of this section based on the determination that two children were behind in their development and had been neglected and abused, and the mother's incarceration and inability to have the children with her. *Fredrick v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 104, 377 S.W.3d 306 (2010).

Termination of the mother's parental rights was affirmed because the evidence demonstrated that all of the children were likely to be adopted and that their welfare and safety would be jeopardized if returned to their mother's custody and the

Department of Human Services adequately proved the statutory grounds as found by the trial court. *Emmert v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 128, 374 S.W.3d 104 (2010).

Termination of a mother's parental rights was proper, pursuant to subdivision (b)(3)(B) of this section, because, although the mother maintained negative drug screenings after completing drug treatment, at the time of the termination hearing she still had not complied with the trial court's directive that she live independently and obtain employment. *Thompson v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 167, 374 S.W.3d 143 (2010).

In a case in which a mother appealed the termination of her parental rights to her child, the trial court found by clear and convincing evidence that termination was in the child's best interests, considering the likelihood that he would be adopted and the potential harm of returning him to his mother's custody. *Churchwell v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 237, 374 S.W.3d 210 (2010).

Circuit court found by clear and convincing evidence that: (1) the mother caused one child's severe burns; (2) the children were dependent-neglected; (3) they had continued out of the custody of the mother for 12 months; and (4) despite a meaningful effort by the Department of Human Services to rehabilitate her and correct the conditions that caused removal, those conditions had not been remedied by the mother; and termination of parental rights was upheld. *Mason v. Ark. Dep't of Health & Human Servs.*, 2010 Ark. App. 251 (2010).

On appeal from the termination of the mother's parental rights, while it was true that the mother was only separated from her child for three months prior to the termination hearing, the facts were undisputed that the child was not in the mother's custody during that time; rather, the child was in the custody of the Department of Human Services (DHS) and continued to be in DHS custody in excess of 12 months. As such, the second element of subdivision (b)(3)(B)(i)(a) of this section was satisfied. *K.C. v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 353, 374 S.W.3d 884 (2010).

Termination of the mother's parental rights was improper because the third

element of subdivision (b)(3)(B)(i)(a) of this section, that the parent had not remedied the conditions that caused removal, was not satisfied. It was impossible for the mother to have remedied the problems that caused removal because she was not the cause of the removal of the child, the child's grandmother was. *K.C. v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 353, 374 S.W.3d 884 (2010).

In view of evidence that a mother failed to complete substance abuse programs and was indifferent to having her child in her life, which showed potential harm to the child if he were returned to her, her parental rights were properly terminated based on the "other factors" ground found in subdivision (b)(3)(B)(vii) of this section. *Rodgers v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 452, 376 S.W.3d 496 (2010).

Trial court's decision to terminate a mother's parental rights was not clearly erroneous because there was no evidence showing that keeping the mother's parental rights intact was any more likely to allow the children to stay together than termination; the testimony indicated that the children would likely be adopted, keeping the children with the mother would likely expose them to harm, and it was not clear from the evidence that the maternal grandmother would be a suitable placement within a time frame suitable for the children, if at all. *Davis v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 469, 375 S.W.3d 721 (2010), overruled, *Ellis v. Ark. Dep't of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

Termination of a mother's parental rights to children, who were previously adjudicated as dependent-neglected, was upheld because there was sufficient evidence to find that the mother failed to correct the conditions that caused the removal of the children. The termination was in the children's best interest because the foster parent was anxious to adopt, the children would suffer potential harm if they were returned to the mother's custody, and the mother was unable to maintain stable or adequate housing and was unemployed. *Hughes v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 526 (2010).

Finding that parents' ongoing issues with mental instability, environmental neglect, and marital troubles warranted termination of their parental rights was

not clearly erroneous, and one ground to terminate their rights under subdivision (b)(3)(B) of this section was proven as their rights to an older child had previously been terminated. *Masterson-Heard v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 623 (2010).

Judgment terminating the mother's parental rights to her son was reversed because both the mother and the child had mental problems that required treatment and therapy, and their mutual love and affection was something that should not be lightly dismissed considering the child's prospects for happiness. *Grant v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 636, 378 S.W.3d 227 (2010).

Judgment terminating the mother's parental rights was affirmed because the trial court was faced with evidence that the mother drank during unsupervised visits with the child, that the mother exhibited resistance to constructive coaching, and the mother's job status was shaky. *Edwards v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 739, 379 S.W.3d 609 (2010).

Termination of the father's parental rights was proper pursuant to subdivision (a)(3) of this section because the children were very young when they were removed from the father's custody and they had resided in foster care for well over one year; the children's need for permanency and stability was evident; the father had little regard for the children's well-being while they were in his custody; he was convicted of the crime of endangering their welfare; he possessed multiple convictions for other criminal offenses; and his lack of judgment reflected poorly on his capacity to care for the children. *Johnson v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 763 (2010).

Termination of the mother's parental rights to two of her sons was appropriate because the trial court specifically considered the likelihood that the juveniles would be adopted and the potential harm, specifically the negative impact on the health and safety of the juveniles, if they were returned to the custody of their mother. The trial court also found that two statutory grounds under subdivisions (b)(3)(B)(i) and (ii) of this section were present; in part, the correction of the conditions that caused removal had not been remedied. *Myers v. Ark. Dep't of*

Human Servs., 2011 Ark. 182, 380 S.W.3d 906, cert. denied, 565 U.S. 943, 132 S. Ct. 403, 181 L. Ed. 2d 258 (2011).

Termination of the father's parental rights was appropriate pursuant to subdivision (b)(3) of this section because he failed to remedy the conditions that caused removal by failing to obtain housing and employment separate and apart from the religious ministry, despite the Department of Human Service's meaningful efforts. *Seago v. Ark. Dep't of Human Servs.*, 2011 Ark. 184, 380 S.W.3d 894 (2011).

Grounds for termination of parental rights were proven by clear and convincing evidence that the parents were under the sway of a quasi-religious organization headed by an individual who had been convicted of violating the Mann Act; the circuit court found parents' testimony that they would not permit abuse of their children was not credible. *Krantz v. Ark. Dep't of Human Servs.*, 2011 Ark. 185, 380 S.W.3d 927 (2011).

Termination of the father's parental rights was appropriate because it was in the child's best interest under subdivision (b)(3)(A) of this section to do so. An adoption specialist testified that the child would likely be adopted and potential harm included the father's unwillingness to comply with the case plan by failing to find suitable housing outside the religious ministry. *Reid v. Ark. Dep't of Human Servs.*, 2011 Ark. 187, 380 S.W.3d 918 (2011).

Termination of the father's parental rights was appropriate under subdivision (b)(3)(B)(i)(a) of this section because the children had been out of the home for over 12 months and, despite a meaningful effort by the Department of Human Services to rehabilitate the parent and correct the conditions that caused removal, those conditions had not been remedied. The father did not attend all of his required counseling sessions and attended only one staffing meeting; more significantly, he admitted that he failed to obtain housing and employment separate and apart from the religious ministry. *Reid v. Ark. Dep't of Human Servs.*, 2011 Ark. 187, 380 S.W.3d 918 (2011).

Termination of a mother's parental rights in four children was appropriate under subdivision (b)(3)(B)(i)(a) of this section where the mother refused to ad-

dress a drug problem, attend counseling, or complete parenting classes, in direct defiance of court orders and in contravention of recommendations. *Richmond v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 36 (2011).

Although children were removed from a mother's home based on a report of sexual abuse, a circuit court did not err in relying on subdivision (b)(3)(B)(vii)(a) of this section to support termination of the mother's parental rights because subsequent issues arose concerning the chronic violence in the mother's home, including: (1) the mother's continuing cohabitation with the man who perpetrated the violence; (2) the mother's threats towards agency workers; and (3) the mother's need for counseling. *Porter v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 342 (2011).

Since a mother's appeal challenged only one of the three grounds listed by the trial court for termination of the mother's parental rights under subdivision (b)(3)(B) of this section, leaving unchallenged the two alternative grounds on which the trial court relied, the court would not reverse the judgment. *Martin v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 423, 384 S.W.3d 580 (2011).

Mother's rights were terminated pursuant to subdivision (b)(3)(B)(vii)(a) of this section because within five months of having her children returned she was arrested for 16 felony counts of forgery, and three months after that, she was charged with six felony drug charges, including selling pain medication prescribed for her ill daughter. She was not employed, the children could not live at the halfway house she entered after being released from jail, and the children had been out of her custody for a total of nearly four years. *Stewart v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 577 (2011).

Termination of the father's parental rights to his three children was affirmed because after appellant was allowed unsupervised overnight visits with the children, one of the children made new allegations of inappropriate touching and another developed nightmares and other issues that resolved when the visits stopped. *Murray v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 588, 385 S.W.3d 897 (2011).

Termination of parental rights was appropriate because the written judgment

referenced the Department of Human Services' petition, there was evidence to support termination under subdivision (b)(3)(B)(vii)(a) of this section, and the mother had abandoned the child. *Nespor v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 745, 387 S.W.3d 239 (2011).

Trial court did not err in terminating a mother's parental rights to her five children because due to the children testing positive on their drug screens, they were subjected to aggravated circumstances, as defined in subdivision (b)(3)(B)(ix) of this section. *Reichard v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 762, 387 S.W.3d 279 (2011).

Trial court did not err in terminating a mother's parental rights to her child under subdivision (b)(3)(B)(ix)(a)(3)(B)(i) of this section because there were no additional services that could be offered to make her a fit parent, and the services offered failed to give her any insight into proper parenting; there were also two different occurrences of unexplained injuries to the child's face. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 791, 387 S.W.3d 311 (2011).

Trial court did not err under subdivision (b)(3)(B)(ix)(a)(3)(B)(i) of this section in terminating parents' rights to their child because the child had been subjected to aggravated circumstances based on sexual abuse by her adoptive father; given the family's attitudes and lack of progress toward reunification after more than one year of services, the finding that termination was in the child's best interest was not erroneous. *Draper v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 112, 389 S.W.3d 58 (2012).

Trial court did not err in terminating a mother's parental rights under subdivision (b)(3)(B)(i)(a) of this section because her children were removed from her custody due to inadequate supervision, environmental neglect, and her unfitness due to alcohol abuse; at the time of the termination hearing 13 months later, she was not in compliance with the majority of the case plan. *Lewis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 154, 391 S.W.3d 695 (2012).

Trial court did not err under subdivision (b)(3)(B)(vi)(a) of this section in terminating a father's parental rights to his three children because one of the children maintained that he sexually abused her and

that she did not want to go home with him because she believed the abuse would continue; a caseworker did not believe that the children could be safely placed back with him. *Blanchard v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 215, 395 S.W.3d 405 (2012).

Court properly terminated a mother's parental rights because the mother did not demonstrate that she was able to provide a stable home or sufficient income, she did not demonstrate appropriate decision-making regarding her relationships and roommates, and the children had a "high likelihood" of adoption. *Reed v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 369, 417 S.W.3d 736 (2012).

Trial court did not err in terminating the mother's parental rights because there was sufficient evidence to support a finding that termination was in the child's best interest, and the Department of Human Services had proved that the mother had abandoned the child and had subjected him to aggravated circumstances under subdivision (b)(3)(B)(ix) of this section and § 9-27-303. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. *Fant v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 428 (2012).

In a termination of parental rights case under this section, even though a mother contended that a meaningful effort was not made to rehabilitate her and to correct the conditions that caused the removal of the children, she did not challenge either of the grounds upon which the trial court's order was based. Moreover, reasonable efforts did not require the cleaning of the mother's house for her. *Lowery v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 478 (2012).

Finding that the Department of Human Services proved at least one ground for termination was not clearly erroneous, given in part that (1) there was testimony that while the mother had housing, it was not stable housing, (2) as of the date of the hearing, the only housing she had was inadequate to meet the basic needs of the children, (3) there was testimony that she had a spotty work history and she was at her current job for only one month, and (4) her visitation with the children was sporadic and it was disruptive to the children when she failed to attend visitations. Wit-

tig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, 423 S.W.3d 143 (2012).

Trial court's finding that the Department of Human Services proved that a father did not maintain meaningful contact with the children was not clearly erroneous, given in part that (1) he only saw them four times in the four months before his arrest, and in the time that followed, his only attempt at contact was two letters to the children, (2) nothing indicated that he asked for permission to see the children or that he took advantage of any chances to see them that would have been available while he was in prison, and (3) although the department did not produce evidence that he did not provide support, the ground the trial court found was met with either a lack of support or a lack of meaningful contact. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, 423 S.W.3d 143 (2012).

It was not clearly erroneous for the trial court to find that returning the child to the father would have subjected her to potential harm, given that he never advanced to a trial placement or overnight visits, nor did he request this, the child was bonded to her foster parents, and it was reasonable to find that taking her from them to live with the father who willingly had the bare minimum of contact with her would have subjected her to harm. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, 423 S.W.3d 143 (2012).

Court affirmed the termination of a father's parental rights to his child; there was a lack of the payment of child support, plus there was evidence of questionable judgment on the father's part, including supporting the child being returned to the mother, although she was unfit to raise the child. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, 423 S.W.3d 143 (2012).

Trial court did not err in terminating a father's parental rights to his child pursuant to subdivision (b)(3)(B)(i)(a) of this section because the trial court's finding that the father had sexually abused his girlfriend's daughter and a psychiatrist's testimony that he was not a fit parent were sufficient evidence of potential harm; the alleged sexual abuse was the reason for removal more than 12 months before. Gipson v. Ark. Dep't of Human Servs., 2012 Ark. App. 554 (2012).

Court properly terminated parental rights because a visit to the parents' home showed a garbage-strewn yard, a filthy kitchen, a filthy bathroom, and a house filled with thick smoke; there was concern that the father was tracking sewage into the house and that bacteria were being brought into the house. Gray v. Ark. Dep't of Human Servs., 2013 Ark. App. 24 (2013).

Trial court did not err in terminating a mother's parental rights pursuant to subdivision (b)(3)(B)(vii) of this section because she failed to obtain drug treatment, a relevant point given that illegal drug use was a contributing factor in the death of the children's sibling. She failed to complete a psychological evaluation or enter counseling; such factors arose after a petition for dependency-neglect was filed. Campbell v. Ark. Dep't of Human Servs., 2013 Ark. App. 84, 426 S.W.3d 501 (2013).

Trial court did not err under subdivision (b)(3)(B)(vii) of this section in terminating a father's parental rights to his three children because he failed to provide adequate and stable housing, did not have a driver's license, failed to complete drug and alcohol screening and treatment, and was unable to care for and provide for the special needs of his children. Fenstermacher v. Ark. Dep't of Human Servs., 2013 Ark. App. 88, 426 S.W.3d 483 (2013).

Mother's parental rights were properly terminated where it was shown that her children had been adjudicated dependent-neglected, they had remained out of their parents' custody for more than 12 months, and the conditions that caused removal had not been remedied, despite meaningful efforts by the Department of Human Services; the fact that one child was placed in the mother's custody for a period of time did not present a barrier to termination because the 12 months did not have to immediately precede the filing of the petition nor did it have to be for 12 consecutive months. In addition to the adoptability of the children and their need for permanency, the mother failed to secure employment until shortly before the termination hearing, and she admitted lying about her drug usage and falsifying a drug screen. Spencer v. Ark. Dep't of Human Servs., 2013 Ark. App. 96, 426 S.W.3d 494 (2013).

Trial court did not err in terminating a mother's parental rights to her two chil-

dren pursuant to subdivision (b)(3)(B)(vii)(a) of this section because the decision was fueled by her instability and drug use; she was unable to visit the children or do a trial placement with them in the nine months since they had been taken from her. *Davison v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 136 (2013).

Mother's appeal from the termination of her parental rights under subdivisions (b)(3)(B)(i)(a) and (b)(3)(B)(vii)(a) of this section would have been frivolous and counsel was relieved from representation where the termination order followed all governing statutes; the trial court found that the children were in the Department of Human Services custody for 36 months, termination was in their best interest, and there was potential harm in returning them to the mother. Moreover, she failed to comply with the case plan, she tested positive for drugs, she lacked stable housing, she was living with a sex offender, and she had periods of incarceration. *Robertson v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 218 (2013).

Substantial evidence supported the circuit court's conclusion that termination of a mother's parental rights was in her children's best interest. Based on the mother's ongoing substance-abuse problems, there was evidence of potential harm to the children if they were reunited with her. *Dang v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 251 (2013).

Termination of a mother's parental rights was warranted based on the fact that the children had been out of the home for more than one year and the conditions that caused removal had not been remedied. Although this ground was not alleged in the termination petition, there was substantial evidence supporting the circuit court's finding. *Dang v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 251 (2013).

Although there was little direct evidence to show that the mother was responsible for the child's behavior, because the circumstantial evidence that she either abused the child or failed to protect him from abuse was overwhelming, under subdivision (b)(3)(B)(vii) of this section, termination of her parental rights was proper and in the child's best interests. *McDaniel v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 263 (2013).

Mother's parental rights were properly terminated because the mother had no home of her own, she still used illegal drugs, she had disobeyed court orders by failing to complete parenting classes and outpatient drug treatment, she had not obtained stable employment, and she did not maintain contact with the children. The trial court found that, since there had been a finding that there was little likelihood that services would result in successful reunification, aggravated circumstances existed. *Strong v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 278 (2013).

Father's parental rights were properly terminated because there was testimony that, although the father had completed parenting classes, his parenting skills had not improved, and the father had an inability to control his temper and exhibited intimidating and aggressive behavior that negatively impacted his daughter. The father tested positive for marijuana and opiates, and at the time of the termination hearing he lived in a one-bedroom apartment and was unemployed with no transportation. *Armstrong v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 295 (2013).

There was no clear error in the trial court's finding that the ground for termination was established, as the father lacked stable employment and housing, plus had anger issues, did not manage his medications well, lacked a driver's license and did not complete the home study information packet, had a drug relapse and outstanding warrants, and he was unable to care for the child despite the services that had been provided. *Austin v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 406, 428 S.W.3d 573 (2013).

There was no clear error in the trial court's finding that the ground for termination was established, as the child had been adjudicated dependent-neglected based on the drug use of her parents, and the father continued to have drug issues and lacked stable employment and housing. *Austin v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 406, 428 S.W.3d 573 (2013).

Termination ground related to other factors arising subsequent to the petition filing was not proven because the department failed to show it took steps to contact the father after his appearance, to determine his caregiver suitability, or to provide him with services. *Jackson v. Ark.*

Dep't of Human Servs., 2013 Ark. App. 411, 429 S.W.3d 276 (2013).

Court did not interpret the ground as to failure to remedy conditions that caused removal as broadly as the department did, as the child came into custody because of the mother's drug use and the father's absence was not the cause of the removal, such that the provision was not applicable to him and could not support termination. *Jackson v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 411, 429 S.W.3d 276 (2013).

Father's parental rights were properly terminated because he did not go to alcohol classes because he did not like the people present, he had been jailed for failure to pay fines, and he did not provide documentation of employment. *Sellers v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 417 (2013).

Mother's parental rights were properly terminated because she never completed a psychological evaluation until the end of July 2012, she did not obtain employment until a month before the termination hearing, and she did not complete the drug and alcohol assessment until a week before the termination hearing. *Sellers v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 417 (2013).

Court properly terminated a father's parental rights because the child had a deep cut on her foot that the school nurse believed should have had stitches, the father told her that it would be fine, and they did not have any medicine to clean the cut. The house was extremely messy — there was no place to sit, two children were sleeping on the floor because their beds had clothes on them, and the house smelled like wet dogs and urine. *Morrison v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 479, 429 S.W.3d 329 (2013).

Trial court did not err in terminating a mother's parental rights pursuant to subdivision (a)(3) of this section because she repeatedly missed scheduled visitation with her children and had not rectified the problems of homelessness, unemployment, methamphetamine abuse, and failing to take her medications for bipolar disorder and schizophrenia. *McPherson v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 525 (2013).

Parents' rights were properly terminated pursuant to subdivisions (b)(3)(B)(i)(a) and (vii)(a) of this section

because they failed to remedy the conditions causing removal; the mother could not care for the children because she was incarcerated and the father, a quadriplegic, could not remain drug free. *Emmons v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 541 (2013).

Termination of the mother's parental rights to her two children was affirmed because (1) the mother could not provide for their basic needs, used drugs, and had demonstrated an inability to stay out of jail; and; (2) the mother made only marginal attempts at improving her situation since she reinstituted contact with Department of Human Services in August 2012. *Anthony v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 556 (2013).

Termination of the mother's parental rights was proper as (1) the testimony supported the determination that she made minimal progress because, despite three referrals, she delayed seeking drug treatment until the 11th hour, and she was arrested on drug-related charges only two months prior to the termination hearing; and (2) the mother failed to challenge the trial court's independent, alternative grounds for termination. *McBride v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 566 (2013).

Termination of the mother's parental rights to her five children was proper because the specific conditions that prompted removal were abuse and neglect, but the underlying cause of those conditions was a lack of stability, including her choice of abusive men for romantic partners and her issues with procuring stable housing and employment throughout the case; and there was sufficient evidence presented to support a finding that the mother had still not remedied the underlying lack of stability. *Toney v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 92 (2014).

As only one ground was required, and the court found one ground sufficient to support termination, the court did not address other issues on other grounds. *McElroy v. State Dep't of Human Servs.*, 2014 Ark. App. 117, 432 S.W.3d 109 (2014).

Evidence supported the finding that the mother continued to use illegal drugs, plus she was unemployed throughout a majority of the case, and this was only a sampling of the actions the mother took

that were against court orders; there was more than enough evidence to show that in the more than 12 months since the children went into care, the mother failed to remedy the unfitness and neglect that caused removal, and termination of the mother's parental rights was not clearly erroneous. *McElroy v. State Dep't of Human Servs.*, 2014 Ark. App. 117, 432 S.W.3d 109 (2014).

Termination of a mother's parental rights was affirmed, given that she dismissed the order of protection, moved in with the father and refused to leave the abusive relationship, and told the court she saw no reason to leave him, even at the cost of not having the child returned to her. *Weathers v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 142, 433 S.W.3d 271 (2014).

It was clear that termination of the mother's parental rights was in the children's best interests and that grounds for termination were proven, given that more than 17 months had elapsed since the children had been removed, and despite services, the mother manifested the indifference or incapacity to remedy the issues that prevented the children's return to her custody. *Carroll v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 199 (2014).

Trial court terminated the mother's parental rights because the trial court was not convinced that her changes would last because they were too new and too slow in coming, and the trial court, which had enough experience to ascertain whether the mother's current progress would continue, found her not to be credible, and given the court's deference to credibility determinations, the trial court's findings were not clearly erroneous. *Henson v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 225, 434 S.W.3d 371 (2014).

Father did not comprehend that he could not just take the child home and out of a nursing facility, as the child had profound developmental delays and medical needs, and this was the basis for the other factors ground; the father's incapacity to understand the level of the child's needs and his failure to prepare for them meant that his parental rights had to give way to the child's need for permanency and safety, and termination of the father's rights was affirmed. *Ford v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 226, 434 S.W.3d 378 (2014).

Trial court did not err in terminating a father's parental rights to his sons because it found three bases for the termination under the statute; the father continued to have a relationship with the mother, who voluntarily relinquished her parental rights to the sons, and allowed phone contact between her and the sons despite a no-contact order, he denied knowledge of the severity of one of the son's injuries, and he knew of the abuse the son suffered yet did nothing to prevent it. *Jackson v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 288 (2014).

Evidence was sufficient to terminate the parents' rights under this section where it showed that the Department of Human Services (DHS) made reasonable efforts to rehabilitate the parents and correct the conditions that caused removal, as they did not cite any specific services that DHS should have or could have provided to them while they were incarcerated. *Hamman v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 295, 435 S.W.3d 495 (2014).

Trial court's decision to terminate the parental rights of both parents under this section was not clearly erroneous because both parents testified positive for methamphetamine on multiple occasions, the mother had no driver's license or transportation, the father expected to serve four years in prison, neither parent had visited their children for a few months, a caseworker testified that the children were adoptable and that due to drug use and environmental concerns the children would be in danger if returned to either parent. *Thompkins v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 413, 439 S.W.3d 81 (2014).

Trial court properly terminated a mother's parental rights because the child's extensive injuries were consistent with child abuse, the child was at substantial risk of serious harm as a result of physical abuse and medical neglect, the child would be at significant risk of potential harm if returned to the mother's custody given that she was severely injured at the age of six months and shortly after being placed back with the mother, and the child was adoptable. *Harris v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 447 (2014), cert. denied, — U.S. —, 135 S. Ct. 2352, 192 L. Ed. 2d 149 (2015).

Circuit court's finding on the failure to remedy ground for termination was not

clearly erroneous, as the mother had incurred a driving while intoxicated charge months after the children had been taken into custody and she completed substance abuse treatment, the mother testified that she did not attend counseling, and the circuit court was concerned that the mother just attending Alcoholics Anonymous meetings alone was insufficient to address her ongoing problem. *Tuck v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 468, 442 S.W.3d 20 (2014).

Finding that the termination ground of subsequent factors was proven as to both parents was not clearly erroneous, given the mother's mental health issues and refusal to take her medication, and her unstable housing and lack of employment until one month before the hearing, plus the father was in prison after having his parole revoked and his release date was uncertain. *Tuck v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 468, 442 S.W.3d 20 (2014).

There could be no meritorious challenge to the sufficiency of the evidence supporting termination of the mother's parental rights, given that she tested positive several times for various drugs, she admitted using drugs while having custody of the children, she never completed drug treatment, and she refused to end her relationship with the father despite warnings to do based on the domestic altercations; termination of her parental rights was in the best interest of the children and statutory grounds were proven, as the children were at risk of harm, they were adoptable and had been out of the mother's custody for over 12 months, and the conditions causing removal had not been remedied. *Compton v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 501 (2014).

Mother's parental rights were terminated in part due to her inability or unwillingness to provide for the extensive special needs of her children, which was adverse to their health and safety. *Johnson v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 34 (2015).

While the circuit court's order found clear evidence to support all four grounds alleged in the termination petition, only one ground had to be proven; an order of termination as to the mother's four other children was entered into evidence, and thus the clear and convincing evidence establishing this termination ground was

sufficient alone to support the termination order, and discussion of evidence supporting the other grounds was unnecessary. *Mosher v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 111, 455 S.W.3d 367 (2015).

Termination of a father's parental rights was proper because, although he denied drug use, it was undisputed that he lost his job after testing positive for methamphetamine, and he missed multiple drug screens; moreover, he violated a court order by exposing the children to their drug-addicted mother, there was the potential for harm if the children were returned to their father's custody, and there was evidence that the children were highly adoptable. Other issues arose after this case began that demonstrated that the return of the children to the father's custody would have been contrary to their health, safety, or welfare. *Humbert v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 266, 460 S.W.3d 316 (2015).

Evidence was sufficient to support the termination of a father's parental rights under this section because the causes for the child's removal from the home had not been remedied where the father had refused to take drug tests and had been incarcerated for extended periods; as to the subsequent factors ground, the father did not object to a caseworker's testimony about his criminal history, and the father disobeyed a court order, despite knowing that his submission to a drug test was a condition of getting his child back. The father's failure to challenge the trial court's prior meaningful efforts findings precluded the appellate court from reviewing any of those adverse rulings. *Norton v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 43, 481 S.W.3d 780 (2016).

Imprisonment.

Former subdivision (2)(H)(ii) required only that a sentence exceed 15 years, not that 15 years actually be served; thus, the putative father of a child was sentenced to an amount of time that was "substantial" within the meaning of this section where, by virtue of his parole revocation, he was effectively "sentenced" to the remainder of his 30-year sentence and either had a new 15½ year sentence or had been "sentenced" to 30 years, of which he had already served 14½ years. *Jones v. Ark. Dep't of Human Servs.*, 70 Ark. App. 397, 19 S.W.3d 58 (2000).

There was clear and convincing evidence warranting termination of an incarcerated mother's parental rights to her minor child who came into care due to the mother's drug use and instability, the child had been out of the home in excess of 12 months, and conditions had not been remedied; further, the mother was incarcerated again for drugs and sentenced to 144 months in prison for having a methamphetamine lab in her home with the child present. *Smith v. Ark. Dep't of Human Servs.*, 93 Ark. App. 395, 219 S.W.3d 705 (2005).

Trial court did not err in terminating a father's parental rights under subdivision (b)(3)(B) of this section on the ground that he was sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the child's life because the child was 10 months old when the father received a 10-year sentence for drug offenses. *Fields v. Ark. Dep't of Human Servs.*, 104 Ark. App. 37, 289 S.W.3d 134 (2008).

There was no error in the termination of a parent's parental rights because the child was likely to be adopted, the child's safety was in jeopardy if returned to the parent, and the parent was incarcerated for 15 years. *Barber v. Ark. Dep't of Health & Human Servs.*, 2010 Ark. App. 381 (2010).

Trial court did not err under subdivision (b)(3)(B)(viii) of this section in terminating a mother's parental rights to her child because by the time she would be released from prison, the child would have spent more than half of the child's life in foster care; even then, there was no guarantee that the child would be immediately able to return to the mother's custody. *Hill v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 108, 389 S.W.3d 72 (2012).

Termination of the mother's parental rights to her son was appropriate because, even if she would be released from prison when she hoped, she would not be able to immediately reunite with the child. The stated intent of this section was to provide permanency in a juvenile's life in all instances where return of a juvenile to the family home was contrary to the juvenile's health, safety, or welfare, and it appeared from the evidence that return to the family home could not be accomplished in a reasonable period of time under subdivision (b)(3)(B)(viii) of this section. *Adams v.*

Ark. Dep't of Human Servs., 2013 Ark. App. 253 (2013).

Termination of the mother's and the father's parental rights was proper because the parents had been incarcerated since March 20, 2012, and had received sentences that would constitute a substantial period of the children's lives, as the mother received a five-year sentence and the father received a four-year sentence. *Smith v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 753, 431 S.W.3d 364 (2013).

Trial court found that the father had been incarcerated for at least the previous two hearings, that he failed to present evidence that he had done anything to maintain a presence in the children's lives, plus he was in no position to care for the children even if released, as his plan was for them to go with their mother or grandmother, and these findings were supported by the evidence; the termination of his rights was affirmed. *Henson v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 225, 434 S.W.3d 371 (2014).

Under the incarceration ground for termination of parental rights, the trial court found that one child was less than one year old and the other child was less than one month old when the father went to jail, and he was sentenced to five years, such that by the time of his release, he would have been incarcerated for a substantial period of the children's lives, and this decision was within the bounds of case law. *Moses v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 466, 441 S.W.3d 54 (2014).

Incarceration statutory ground for termination of parental rights does not require the Department of Human Services to provide services to the parent while he is in prison as a prerequisite to termination or to contemplate what it will do when he is released, so the trial court's seeming lack of consideration of services the department should have or could have offered in this case was not reversible error. *Moses v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 466, 441 S.W.3d 54 (2014).

Trial court did not clearly err in finding that termination of parental rights was in the children's best interest, given in part that it was not certain that, even upon the father's release from prison, he would be approved to take the children, he had

never lived with one child and had only seen pictures of the other, plus the trial court noted his significant history of violence, including physical abuse to the mother and a police officer. *Moses v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 466, 441 S.W.3d 54 (2014).

Father's counsel was not allowed, under Ark. Sup. Ct. R. 6-9(i)(1) (2013), to withdraw from a termination of parental rights appeal because (1) the father was not offered services, and (2) an arguable issue existed as to erroneous termination under subdivisions (b)(3)(B)(i)(a) and (vii)(a) of this section, since the father's incarceration was no cause for removal nor a subsequent "other factors or issues" ground. *Poss v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 514, 443 S.W.3d 594 (2014).

Whether parental rights should be terminated on the imprisonment ground depends on the particular facts and circumstances of each case. *Brumley v. Ark. Dep't of Human Servs.*, 2015 Ark. 356 (2015).

Although father had been in prison when the child was removed from mother's home and the father expected to be released from prison six months after the termination hearing, the appellate court upheld termination of the father's parental rights. Father's seven years of incarceration during the life of his nine-year-old son constituted a substantial period of the child's life under this section and was sufficient to support termination of the father's parental rights. *Brumley v. Ark. Dep't of Human Servs.*, 2015 Ark. 356 (2015).

The prison sentence, not the potential release date, determines whether the imprisonment ground for termination of parental rights is satisfied. *Brumley v. Ark. Dep't of Human Servs.*, 2015 Ark. 356 (2015).

Trial court did not clearly err by finding that the father's 12-year prison sentence was a substantial portion of his four-year-old son's life and terminating his parental rights under this section. *Heflin v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 182, 458 S.W.3d 262 (2015).

Trial court did not clearly err in finding that the father's 20-year prison sentence was a substantial portion of the child's life where that decision fell within the bounds of Arkansas case law. *Basham v. Ark.*

Dep't of Human Servs., 2015 Ark. App. 243, 459 S.W.3d 824 (2015).

Circuit court did not err in terminating a father's parental rights because termination was in the child's best interest, the likelihood of adoption was very good, there was a risk of potential harm if the child were returned to the father, the father's 10-year sentence for possession with the intent to deliver constituted a substantial period of the child's life, counsel complied with the requirements for no-merit appeals in termination cases, and the father's appeal was wholly without merit. *Taylor v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 284 (2015).

Father's parental rights were properly terminated in January 2015 where he had been incarcerated for a substantial amount of time during the lives of his children, although his expected release date was May 2015; it was not necessary to address issues related to other grounds since only one was necessary to support termination. It was in the best interest of the children for the father's rights to be terminated because, inter alia, he failed to protect the children from the drug abuse of their mother, he had a history of not supporting a child from a previous relationship, and he was incarcerated and had no stable home at the time of the termination hearing. *Sanford v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 578, 474 S.W.3d 503 (2015).

Evidence of the length of the father's sentence was properly before the court in the form of his motion for a continuance; he was sentenced to eight years' imprisonment, which was a substantial period of time for a child less than three years of age, and thus the court affirmed the termination of the father's parental rights. *Edwards v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 37, 480 S.W.3d 215 (2016).

Termination of the father's rights was in the child's best interest, given that the father had been incarcerated throughout the life of the case, there was no evidence that he had any contact with the child during his incarceration, and even assuming he would be released when he hoped, he would not be able to immediately reunite with the child, who needed termination to achieve permanency; the father failed to demonstrate a close bond between the child and the father's mother, and thus his argument that termination

adversely affected the child's relationship with the father's mother was not persuasive. *Edwards v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 37, 480 S.W.3d 215 (2016).

Department of Human Services proved by clear and convincing evidence that termination of a mother's parental rights was appropriate where she had been sentenced to a 14-year term of imprisonment when the child was less than two years old, a caseworker testified that the child was likely to be adopted, placement in another relative's home was not relevant to the issue of termination, and the fact that the mother might have been eligible for early release was not relevant. *Adams v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 131, 485 S.W.3d 275 (2016).

Termination of the mother's parental rights was proper and in the child's best interests because, at the time of the hearing, she had been incarcerated for approximately one-third of the child's life; by the time of her ultimate release date, she would have been incarcerated for approximately one-half of the child's life; and the potential harm to the child if parental rights were not terminated was clear, as the child could conceivably remain in the custody of the Department of Human Services for up to three years waiting for the mother to be released from incarceration and to satisfactorily complete the case plan; and the child would be required to linger in limbo until the mother was released from jail and got her act together. *Basham v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 232, 490 S.W.3d 330 (2016).

Sufficient evidence showed that termination of the father's parental rights was in the child's best interest where the father had visited the child only three times while the child was in foster care, he made no attempt to contact the child once incarcerated, and there was no evidence that he would maintain his sobriety once released. *Everett v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 541, 506 S.W.3d 287 (2016).

Circuit court did not err in rejecting incarcerated father's request to have his child placed with relatives rather than terminate his parental rights; under § 9-27-338 and according to Arkansas public policy, termination and adoption are preferred to permanent relative placement

when the child is not in the care of a relative at the time of the termination hearing. *Everett v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 541, 506 S.W.3d 287 (2016) (decided under prior version of statutes).

Circuit court's determination that the father had been sentenced in a criminal proceeding for a substantial portion of the 5-year-old child's life was not clearly erroneous where he had been unable to remain out of prison for more than a few years, and there was a substantial amount of incarceration remaining on his original sentence. *Everett v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 541, 506 S.W.3d 287 (2016).

Termination of the father's parental rights under subdivision (b)(3)(B)(viii) of this section was affirmed; the father had received a three-year sentence but was no longer imprisoned as he had only served nine months before his release on parole, he had already tested positive for drugs since his release, and he was subject to parole until February 2018. The children were one, two, and three years old at the time of the termination hearing. *Barnes v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 618, 508 S.W.3d 917 (2016).

Termination of the mother's parental rights to her son was proper because the child was six years old when he was removed from the mother's custody and eight years old at the time of termination; prior to the termination hearing, the mother was sentenced to four years in prison followed by a six-year suspended imposition of sentence; by the time the mother might be released from prison, the child could have spent several years in foster care; even then, it was unlikely that the child could be returned to the mother in a reasonable timeframe; and, from the child's perspective, the mother's sentence constituted a substantial period of the child's life and was not a reasonable period of time for him to remain without permanency. *Campbell v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 82 (2017).

Evidence was sufficient to support termination of a father's parental rights based on incarceration where he had been sentenced to 10 years' imprisonment, the court was not allowed to consider the possibility of early release, the child was nine years old at the time of sentencing, and the 10-year sentence represented the

remainder of the child's juvenile life. *Woodward v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 91, 513 S.W.3d 284 (2017).

Termination of the parental rights of a father was appropriate, as termination was in the child's best interest, because the appellate court was not left with a definite and firm conviction that a mistake was made. The trial court recited the father's repetitive criminal behavior and incarceration during the entirety of the child's life (child was born April 2015), the indefinite nature of the father's future parole, and the testimony that gave reasons to question the viability of the paternal grandparent's home as an appropriate temporary placement for the child. *Romero v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 238, 519 S.W.3d 375 (2017).

Trial court did not err in terminating the father's parental rights where he had been incarcerated essentially all of the child's life and remained incarcerated, the child was healthy and happy with no obvious impediments to adoption, and given his incarceration, the father had no home for the child. *Jameson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 503, 529 S.W.3d 692 (2017).

Termination of a mother's parental rights was in the best interest of the twins where the mother was incarcerated and serving a five-year sentence, there was uncontroverted evidence from the caseworker that the twins were adoptable, a placement meeting with an adoptive family was already scheduled pending the outcome of the termination hearing, and the twins' need for permanency overrode the mother's request for additional time to improve her circumstances. *Butler v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 517 (2017).

Termination of a father's parental rights was in the child's best interest where he had been chronically incarcerated, his own poor choices led to his arrests, in the brief period he had not been incarcerated, he failed to comply with the case plan, and his failure to demonstrate stability or sobriety created an undue risk of harm to the child. *White v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 529, 530 S.W.3d 402 (2017).

Termination of the father's parental rights was proper as the father failed to address the subsequent factors that occurred since the original dependency-ne-

glect petition was filed because he did not have a relationship with the children; he had not seen, met, sent letters, or talked to the children; he was unavailable to take custody of the children when they were removed from their mother; he had been incarcerated for all but two months of the children's lives; he had been eligible for early release since 2015, but he was deemed not eligible for early release based on his disciplinary infractions; and he did not have a plan for housing or employment upon his release. *Earls v. Ark. Dep't of Human Servs.*, 2018 Ark. 159, 544 S.W.3d 543 (2018).

Termination of father's parental rights was appropriate because the father testified that he had been incarcerated for 17 months on a probation violation for non-payment of fines. Although the father testified that he would be released soon, it was in the 15-month-old child's best interest to terminate parental rights because the child had already been in the custody of the Department of Human Services (DHS) for the child's entire life and would have been required to linger in DHS custody at least until the father was released from jail. *Sills v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 9, 538 S.W.3d 249 (2018).

Termination of the father's parental rights was proper based on the sentenced-in-a-criminal-proceeding ground because the father testified that he was sentenced to 20 years' imprisonment; his 20-year sentence encompassed a substantial period of the child's life, who was eight years old at the time of the termination hearing; and, although the father testified that he expected to be released in February 2018, the appellate court looked at the length of the prison sentence, not the potential release date, when reviewing whether that statutory ground was met. *Fraser v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 395, 557 S.W.3d 886 (2018).

Trial court did not err by terminating the father's parental rights rather than place the child with the paternal grandmother because it was undisputed that the father had been incarcerated since the birth of the child, the father admitted that his drug addiction led to his chronic incarcerations, he testified that unless he was granted parole he could be imprisoned until 2023, he was ineligible to even seek parole until at least four months after the

termination hearing, and the child's foster mother indicated that she wished to adopt the child. *Blackwood v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 254, 576 S.W.3d 95 (2019).

Termination of a mother's parental rights was appropriate because the mother was sentenced in a criminal proceeding for a period of time that would have constituted a substantial period of the juvenile's life. Furthermore, it was the prison sentence, not the potential release date, that determined whether this statutory ground was satisfied. *Westbrook v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 352, 584 S.W.3d 258 (2019).

Indian Child Welfare Act.

Trial court did not err in terminating a mother's parental rights to her child because its order could easily be construed as making the necessary finding under the Indian Child Welfare Act of 1978, 25 U.S.C. § 1912(f), that there was proof beyond a reasonable doubt that the mother's continued custody was likely to result in serious emotional or physical damage to the child; the trial court found that the Department of Human Services had proven beyond a reasonable doubt grounds under subdivision (b)(3)(B)(i)(a) of this section because the child had been in foster care for 17 months, and the mother had not corrected the conditions that caused removal. *Allen v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 608, 377 S.W.3d 491 (2010).

Sufficient evidence supported the termination of a father's parental rights under this section due to the extreme nature of the abuse, the harm caused to an infant, and the fact that the child was in the custody of the father at the time the injuries occurred; a physical examination of the infant showed that she was suffering from fractures to her skull, ankle, wrist, and spine; moreover, she had suffered vaginal trauma and bleeding. The heightened standard of proof required by the Indian Child Welfare Act, 25 U.S.C. § 1912, was applied by the trial court. *Byrd v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 32 (2016).

Evidence was sufficient to support termination of parental rights under the heightened standard of proof beyond a reasonable doubt applicable to Indian Child Welfare Act cases under 25 U.S.C.

§ 1912(f). *Newman v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 207, 489 S.W.3d 186 (2016).

Circuit court was within its province in relying on a tribal representative's testimony in making its finding that active efforts had been made in a parental rights termination case where the representative gave her informed and expert opinion that active efforts had been put forth in the case, that the active efforts failed, and that returning the children to the care of their parents would have subjected them to physical and emotional harm; the representative had remained in contact with DHS and reviewed the juvenile-dependency petition, the probable-cause report, the adjudication order, and the permanency-planning order in reaching her conclusions. *Ritter v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 9, 511 S.W.3d 343 (2017).

Circuit court's finding under the heightened standard of proof of the Indian Child Welfare Act that the father failed to remedy the causes of the children's removal was not clearly erroneous; he admitted he tested positive for illegal drugs twice, there was testimony that he was unable to manage the children at visitations, and he was not in full compliance with his case plan based on his failure to complete certain required programs. *Howell v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 154, 517 S.W.3d 431 (2017).

Mother failed to timely appeal the adjudication order and therefore could not raise the argument in the appeal of the termination of her parental rights that the adjudication order failed to apply the higher burden of proof mandated by the Indian Child Welfare Act; also, the mother did not object during the termination hearing when a certified copy of the adjudication order was entered into evidence. *Howell v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 154, 517 S.W.3d 431 (2017).

Mother's challenge to the qualification of the expert witness under the Indian Child Welfare Act was not preserved for purposes of the appeal of the termination of her parental rights because she failed to raise the issue below. *Howell v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 154, 517 S.W.3d 431 (2017).

Despite the higher burden of proof beyond a reasonable doubt required in pa-

rental rights termination cases under the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., any challenge to the circuit court's determination that termination was warranted was wholly without merit and therefore counsel's motion to withdraw was granted. *Riggs v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 185, 575 S.W.3d 129 (2019).

In a termination of parental rights case involving Indian children under the Indian Child Welfare Act, the trial court did not err in ordering termination of the mother's rights even though the children were living with the grandparents. The children were temporarily placed with the grandparents and were not in the legal custody of the grandparents, it was "not a given" that placement with the grandparents was a permanent or stable option, and the caseworker testified that the grandparents were not "on board" with any permanent arrangement that would have allowed the mother's parental rights to remain intact. Further, the unchallenged evidence was that the mother lacked the capacity to remedy the issues that arose after the children's removal, including the mother testing positive for drugs and being incarcerated multiple times. *Phillips v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 383, 585 S.W.3d 703 (2019).

Indian Child Welfare Act expert's testimony that there was "a risk" of serious physical or emotional damage to the children if they were returned to the mother, as opposed to being "likely to result in" serious emotional or physical damage, did not provide grounds to reverse the circuit court's termination of the mother's parental rights. *Phillips v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 383, 585 S.W.3d 703 (2019).

Jurisdiction.

The exercise of jurisdiction over juveniles is not a permissible function of the county courts. *Hutton v. Ark. Dep't of Human Servs.*, 303 Ark. 512, 798 S.W.2d 418 (1990).

Mother did not preserve for review the argument that service of a petition to terminate parental rights by warning order pursuant to Ark. R. Civ. P. 4(f) was not sufficient because her attorney was provided with notice under Ark. R. Civ. P. 5, the Department of Human Services satis-

fied the requirement of diligent inquiry provided in Rule 4, and at no time during the initial hearing on the petition for termination of the mother's parental rights was an objection made or a ruling requested on the issue of whether service was proper; because the mother was represented by counsel throughout the proceedings, service was properly made upon counsel of record pursuant to Rule 5, the circuit court had jurisdiction, and it was the mother's responsibility to stay informed and keep her attorney informed of her current address. *Blackerby v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 858, 373 S.W.3d 375 (2009).

Moot.

Alleged father's appeal in a termination of parental rights case was not moot, even though he was not found to be the parent, because the circuit court subsequently entered an order terminating nonexistent parental rights; this could have resulted in the automatic termination of parental rights to another child. *Wright v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 676, 449 S.W.3d 721 (2014).

Order.

Although this section speaks in mandatory terms with regard to the filing of a written order within 30 days of the date of the termination hearing, a loss of jurisdiction does not follow because the General Assembly did not provide a sanction for an untimely filing and because there is no evidence that such a result was intended. *Wade v. Ark. Dep't of Human Servs.*, 337 Ark. 353, 990 S.W.2d 509 (1999).

Trial court did not abuse its discretion in denying parents' motion to set aside the termination order or for a new trial because there was no evidence that the trial court's failure to timely file a termination order under subsection (e) of this section made the proceedings unfair or constituted a miscarriage of justice. The parents received a fair opportunity to litigate their rights, and they failed to present any evidence that in the five months following the termination hearing they improved their positions in regard to the case plan. *Newman v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 207, 489 S.W.3d 186 (2016).

Although the circuit court failed to file the written order terminating parental

rights until 127 days after the hearing, precedent unequivocally establishes that a violation of subsection (e) of this section does not warrant reversal or any other sanction. *Blasingame v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 71, 542 S.W.3d 873 (2018).

Circuit court's failure to timely enter a termination order did not warrant reversal or any other sanction. Furthermore, the order entered by the circuit court was simply a written judgment of what the court had announced in open court; thus, a parent suffered no real prejudice because the order was entered simply to show that which actually occurred. *Nichols v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 85, 542 S.W.3d 197 (2018).

Permanency Planning Hearing.

Although subdivision (b)(1)(A) of this section states that the circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency-placement plan for the juvenile, this section does not require that this finding be made specifically at a permanency-planning hearing. A petition to terminate parental rights is not contingent on the outcome of a permanency-planning hearing. *Bean v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 77, 513 S.W.3d 859 (2017).

Circuit court erred in failing to hold a permanency-planning hearing because by choosing to hold a termination of parental rights hearing before such a hearing, it placed itself in a position of determining whether a hearing was required, contrary to the mandatory language of the statute; however, to reverse the order terminating parental rights would be perfunctory in purpose given the record and contrary to the best interests of the children, who had already been out of the home. *McKinney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 475, 527 S.W.3d 778 (2017).

While a termination of parental rights petition may be filed and considered prior to a permanency-planning hearing, there is nothing in § 9-27-341 or § 9-27-338 that permits the circuit court to abdicate its duty to hold a permanency-planning hearing altogether. *McKinney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 475, 527 S.W.3d 778 (2017).

Placement With Relatives.

Circuit court properly terminated a mother's parental rights to her child be-

cause the statutory provision for preferential consideration of placement with relatives was not found in the termination statute, and that preference was not relevant when considering termination of parental rights. *Donley v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 335 (2014).

Termination was in a child's best interest, and the trial court considered relative placement, even at the termination phase and even though it was not required to do so by statute or case law. There was not an appropriate and available relative placement based on instability in the family, as well as safety and credibility issues; moreover, the child was highly bonded with his foster family, who wanted to adopt him. *Roberts v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 226, 490 S.W.3d 334 (2016).

Circuit court properly terminated the mother's parental rights because the statutory provision for relative placement includes adoption, thus contemplating that parental rights may be terminated even when a relative is available for placement; as the child was not in the custody of a relative at the time of termination, and termination was in the child's best interest, the exceptions in § 9-27-338 did not apply. *Robinson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 251, 520 S.W.3d 702 (2017) (decided under prior version of statutes).

Circuit court did not err in terminating a father's parental rights in lieu of pursuing relative placement where there was no evidence that the child had a relationship with any of her relatives, the two relatives identified by the father had either refused to go further or there had not been a response from the home state for a home study, the father had not sought reunification, and the child had been in foster care for over 15 months. *Fisher v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 39, 569 S.W.3d 886 (2019).

Decision to forego a relative-placement option with the Indiana grandparents in favor of terminating the mother's parental rights was clearly erroneous because the grandparents wanted to be involved in the case; the grandparents consistently attempted to communicate with some Arkansas authority about the children; the Department of Human Services did not fulfill its duty to try to locate the grandparents and communicate with them; the

grandparents loved their grandchildren, had visited them, provided them gifts, wished to keep them in the family, and doggedly pursued that course; and the grandparents had a longstanding relationship with all four of the mother's children and stated that they would facilitate visits between all the children. *Clark v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 223, 575 S.W.3d 578 (2019).

Permanent custody with relatives instead of termination of parental rights rejected. *Everly v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 528, 589 S.W.3d 425 (2019).

Circuit court's finding that termination of the mother's parental rights was in the child's best interest was not clearly erroneous where her Cranford-Bunch challenge lacked merit because even though the child was placed successfully with relatives at the time of the termination hearing the child was still in the custody of the Department of Human Services. Further, the mother missed some drug screens and failed others for illegal substances, failed to pay court-ordered child support, was arrested for possession of drug paraphernalia and tampering with physical evidence, failed to maintain stable housing and employment, failed to complete inpatient drug treatment, and failed to complete individual counseling. *Dye v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 10, 592 S.W.3d 254 (2020).

Pleadings.

All three termination grounds found by the trial court to support termination were specifically pleaded in the petition, contrary to the mother's claim, and she was on notice of all three grounds and had the opportunity in a hearing to be heard. *Sarut v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 76, 455 S.W.3d 341 (2015).

Where the petition to terminate parental rights was filed 69 days after the permanency-planning hearing, contrary to the 30-day requirement in § 9-27-338(g), the circuit court was not required to dismiss the petition or hold a second permanency-planning hearing. Subdivision (b)(1)(B) of this section provides that a permanency-planning hearing is not required as a prerequisite to termination and the statutes do not provide a remedy for late filing. In addition, prejudice was not shown, and time is viewed from the

juvenile's perspective in termination cases. *Faussett v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 168 (2017).

Potential Harm.

Order terminating the father's parental rights was affirmed because potential harm to the child existed if returned to the father's custody due to the father's history of domestic violence, his diagnosis of a personality disorder and borderline intellectual functioning, and his wife's paranoid schizophrenia. *Dozier v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 17, 372 S.W.3d 849 (2010).

Mother denied there was any evidence to show potential harm to the children if returned, but the trial court found that return could harm their health and safety because the parents lacked an appropriate lifestyle; the best interest determination was based largely on the circuit court's assessment of the mother's credibility, to which the court deferred, plus there was no guarantee that her release from prison was imminent or that she could establish stability within six months as she claimed. *Loveday v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 282, 435 S.W.3d 504 (2014).

In terminating a father's parental rights, the trial court did not clearly err in concluding that contact could have caused the child to suffer potential harm where the father had not been part of the child's life for the majority of it, the child was thriving in foster care, and the father owed significant back child support, had stopped taking prescribed medications for PTSD, and had tested positive for medications for which he did not have a prescription. *McMahan v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 556, 472 S.W.3d 518 (2015).

Trial court properly terminated a mother's parental rights to her children because, *inter alia*, there had been two drug raids on her home, drugs, drug paraphernalia, and a firearm were found within easy reach of the children, two of the children tested positive for tetrahydrocannabinol (THC), a dead rat was on the kitchen counter, the home was infested with roaches, and while the mother showed progress in getting her life back on track, drugs continued to be sold out of her house, and she had not demonstrated her willingness to put the well-being of

the children above her relationship with her husband and his criminal activity. *Velasco v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 724, 479 S.W.3d 21 (2015).

Finding that termination of the father's parental rights was in the child's best interest was supported by the father's continued drug use and the fact that he allowed the child's mother to visit the child even though such visits had been prohibited by court order, showing potential harm. *Dodd v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 64, 481 S.W.3d 789 (2016).

Although a father argued there was no proof of potential harm if his child was returned to his custody, this argument ignored the fact that the caseworker testified that the child would be at great risk for potential harm because the father was not aware of what was happening with the child. *Caldwell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 144, 484 S.W.3d 719 (2016).

Circuit court did not clearly err in finding that the three children would have been subjected to potential harm if returned to the mother's custody where the mother failed to undergo scheduled drug screens, the issues that caused the children to be placed in foster care for 668 days had not been remedied, and the children had made great progress in foster care. *Hamilton v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 420, 501 S.W.3d 406 (2016).

Circuit court did not err in its consideration of the potential-harm factor for best interest purposes; given the father's history of mixing prescription medications and alcohol, his arrests for public intoxication, and his odd behavior during court hearings, the circuit court was not clearly wrong to find a likelihood of potential harm if the child was returned to the father. *Sharks v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 435, 502 S.W.3d 569 (2016).

There was sufficient evidence to support the trial court's finding that potential harm to the children would occur if returned to the father's custody because, with few exceptions, he had received every service and yet the children ended up back in the department's custody, and he chose to use drugs again. *Stanley v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 581, 507 S.W.3d 544 (2016).

For purposes of the best-interest analysis in parental rights termination cases, potential harm to the child is a factor to be considered, but a specific potential harm does not have to be identified or proved by clear and convincing evidence. *Terrones v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 115, 515 S.W.3d 144 (2017).

For purposes of the best interest analysis, continued contact with the mother would cause the children to suffer potential harm because she tested positive for a controlled substance for which she had no prescription; failed to pay her rent; failed to provide the children needed supervision; failed to keep her house clean; burned one of the children; and failed to obtain and maintain her own stable and appropriate home, instead living with her mother. *Edgar v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 312, 522 S.W.3d 127 (2017).

Circuit court was not clearly erroneous in finding that the children would be at risk of potential harm if returned to their father's custody or that the children were adoptable because two days prior to the scheduled termination hearing, the father admitted and tested positive for using methamphetamine, the father had a history of leaving rehab, he was in and out of jail, and he provided no proof of employment, income, or stable housing. *McKinney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 475, 527 S.W.3d 778 (2017).

Circuit court did not err in finding that returning the children to the mother presented a risk of potential harm given evidence of her ongoing drug use, the testimony about the children's anxiety in not knowing where they would live, and the mother's incarceration at the time of the hearing. *McNeer v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 512, 529 S.W.3d 269 (2017).

Evidence introduced at the termination hearing supported the circuit court's potential-harm finding based on: (1) the mother's continued drug usage, as throughout the course of the proceeding, the mother never once provided a clean drug screen and she did not submit to a hair-follicle test; (2) the mother's lack of knowledge about the child's special needs; and (3) the mother's lack of stability, which was important due to the special needs of the child. *Knight v. Ark. Dep't of*

Human Servs., 2017 Ark. App. 602, 533 S.W.3d 592 (2017).

Termination of the mother's parental rights was in the child's best interest as the mother was not drug free; there was a significant amount of time when she consistently tested negative, but she testified positive for methamphetamine and amphetamines only 19 days before the termination hearing, knowing full well that her parental rights were on the line; and her continued drug use in and of itself was sufficient to support the trial court's finding of potential harm. *Hooks v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 687, 536 S.W.3d 666 (2017).

Although the mother argued that the circuit court's reliance on its no-reunification order for evidence of potential harm was not sufficient, the potential harm determination was upheld where a caseworker testified that she had no information that the mother's status had significantly changed since the reunification services had been terminated several months earlier, the mother had not contacted the Department of Human Services to offer any evidence of changes, and the mother failed to provide any reports or other confirmation that she was compliant with counseling, medications, and other aspects of the court's prior orders. *Rickman v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 261, 548 S.W.3d 861 (2018).

Trial court did not clearly err in its potential-harm determination when terminating a mother's rights to her four children. Even though the mother completed an inpatient-drug-treatment program and obtained housing and employment, a trial placement of the children in her home had to be terminated because she tested positive for THC and she later tested positive for other illegal drugs and alcohol. *Easter v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 280, 550 S.W.3d 432 (2018).

In terminating the father's parental rights, the circuit court's findings concerning potential harm and best interest were not clearly erroneous because his wife horribly abused the child's half-sibling while living with the father, and the father did nothing; the child was present in the home and witnessed the abuse; the father claimed that he wanted to divorce his wife, but he continued to live with her until shortly before the termination hear-

ing, and he lied to the court about his living arrangements and his relationship with her to prevent her from getting in trouble; and, given his past actions, the father would not protect his child from future harm. *Tovias v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 337, 601 S.W.3d 161 (2020).

Reunification.

Department of Human Services was relieved from providing reunification services based on the unappealed finding of aggravated circumstances, specifically that there was little likelihood that services to the family would result in successful reunification. *Willingham v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 568 (2014).

Level of reunification services provided to the father did not provide a basis for reversal of a termination order where he did not challenge the statutory grounds for termination, a no-contact order had remained in place throughout the proceedings, and appropriate reunification services were provided after his release from prison. *McMahan v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 556, 472 S.W.3d 518 (2015).

Regardless of the finality of earlier trial court orders, a parent had an opportunity to object to the failure of the Department of Human Services to provide reunification services at the termination of parental rights hearing, yet the parent failed to do so. Thus, the issue was waived. *Contreras v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 604, 474 S.W.3d 510 (2015).

Statutory ground involving neglect that endangered a child's life did not require any showing that the Department of Human Services provided meaningful services or that further services would not likely result in successful reunification. *Elliott v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 526, 565 S.W.3d 487 (2018).

Although father in a parental rights termination case argued that the Department of Human Services (DHS) did not provide him additional services beyond parenting classes and a paternity test, a finding of aggravated circumstances does not require DHS to prove that meaningful services toward reunification were provided. *Atwood v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 448, 588 S.W.3d 48 (2019).

Right to Counsel.

Because a mother failed to file a timely notice of appeal pursuant to Ark. R. App. P. Civ. 2 from the trial court's adjudication order, the appellate court was unable to consider the mother's arguments relating to errors made during the adjudication hearing; however, the appellate court did consider whether the trial court's failure to provide counsel, pursuant to § 9-27-316, to the mother during the adjudication hearing tainted the remainder of the case, which resulted in termination of parental rights, and found no such taint. *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004).

Father could not show harm from the trial court failing to appoint counsel from the beginning of a proceeding because the father, who was incarcerated, was not a parent from whom custody was removed, and the father was not entitled to appointed counsel before the process moved to termination of the father's rights. Furthermore, the court did appoint counsel for the father almost three months before the hearing on the petition to terminate parental rights. *Sills v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 9, 538 S.W.3d 249 (2018).

Termination of the father's parental rights was improper because he was denied his statutory right to counsel under § 9-27-316. The Department of Human Services did not dispute that the father was entitled to counsel at the onset and the failure to provide him counsel was error, but it claimed instead that the error was harmless; the appellate court disagreed, stating that there was no evidence that the father assented to the stipulations or that he understood the gravity of stipulations as they related to his parental rights. *Buck v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 258, 548 S.W.3d 231 (2018).

Circuit court did not err in terminating a father's parental rights where the father argued on appeal that he was denied his right to timely appointed counsel; contrary to the father's assertion, the children were not removed from his legal custody, he and the mother were not married, and he was correctly identified as the putative father at the outset of the case. Instead of submitting the acknowledgments of paternity to the court that had been executed when the children were

born, the father submitted to a DNA test and was only later found to be the children's "biological and legal father", at which point he was entitled to counsel if requested, but he did not request counsel until the 15-month permanency planning hearing, at which time the court granted his request. *Fox v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 13, 592 S.W.3d 260 (2020).

Service of Process.

Termination of a father's parental rights was improper because he was not properly served with the petition under subdivision (b)(2)(A) of this section; service was not effectuated by mail under Ark. R. Civ. P. 4 because it was not established that a person who signed a green card was the father's authorized agent, and service was not shown under Ark. R. Civ. P. 5 where the alleged method for serving the father's lawyer was not shown. Awareness of the case did not cure a service defect, the error was not harmless, and the father did not waive his insufficient service objection since he raised it when the hearing on the petition to terminate began. *Brown v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 201 (2013).

Trial court clearly erred in denying an incarcerated father's motion to dismiss a petition to terminate his parental rights because, while service on the prison warden had been correctly performed, the father was not properly served where the only document sent to him that was entered into evidence was hand delivered, not mailed first-class mail with the notation of "legal mail," and the letter indicated that only the summons was enclosed, not the petition for termination of parental rights. *McMahan v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 590, 446 S.W.3d 640 (2014).

In a termination of parental rights case, a father was unable to argue that he did not receive proper service of process of a dependency-neglect petition because a termination of parental rights case was a separate proceeding; it was undisputed that the father had been properly served in the termination case. His argument that alleged deficiencies in service at the adjudication stage prejudiced his due-process rights at the termination stage was not argued below. *Lively v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 131, 456 S.W.3d 383 (2015).

Because the mother appeared at the adjudication hearing, review hearings, and termination hearing without raising an objection that the service of process was defective, the mother was represented by counsel in each of the pertinent hearings, and there was nothing in the record showing that the mother or her attorney requested any inquiry into improper service, the defective service of process argument was waived. *Bane v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 617, 509 S.W.3d 647 (2016).

Department of Human Services failed to carry its burden of proving that the petition to terminate parental rights was effectively served. Ark. R. Civ. P. 5 was the basis of the mother's argument that neither she nor her attorney had received the emailed petition, and the trial court relied on that rule in making its finding that the mother was served through her attorney. The mother's awareness of the case could not cure the service defect. *Howell v. Ark. Dep't of Human Serv.*, 2018 Ark. App. 117, 545 S.W.3d 218 (2018).

Sexual Abuse.

In the adjudication order, the trial court found that the child was sexually abused, probably by his father, and the failure to identify the perpetrator of the sexual abuse did not diminish the trial court's finding of dependency-neglect under § 9-27-303(18)(A)(iii) (now § 9-27-303(17)(A)(iii)); at the termination hearing, the trial court found that the father had in fact sexually abused the child, a sibling of the triplets, and as the mother was aware of the father's status as a sex offender and failed to protect the child, termination of her rights under subdivision (b)(3)(B)(vi) of this section was proper. *Parnell v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 108, 538 S.W.3d 264 (2018) (sub. op. on reh'g).

Termination of the father's rights was affirmed; neither the police nor the trial court believed the father's denials, and instead they found that he had sexually abused one child, and this represented potential harm that prevented all four children from being placed in his care, for purposes of this section. *Parnell v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 108, 538 S.W.3d 264 (2018) (sub. op. on reh'g).

Standards of Review.

When the burden of proving a disputed fact in chancery is by clear and convincing evidence, the question on appeal is whether the chancellor's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of witnesses. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997).

There are no cases in which the superior position, ability, and opportunity of the trial court to observe the parties carries as great a weight as when the interests of minor children are involved; thus, on review, the Supreme Court of Arkansas gives a high degree of deference to the trial court. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

In a termination of parental rights case, in reviewing the trial court's evaluation of the evidence, the appellate court will not reverse unless the trial court's finding of clear and convincing evidence is clearly erroneous; in matters involving the welfare of young children, the appellate court will give great weight to the trial judge's personal observations. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W.3d 453 (2004).

Appellate court reviews termination of parental rights cases de novo, and grounds for termination of parental rights must be proven by clear and convincing evidence. *Kight v. Ark. Dep't of Human Servs.*, 87 Ark. App. 230, 189 S.W.3d 498 (2004).

Mother's parental rights were improperly terminated, under this section, where the facts warranting the termination were not proven by clear and convincing evidence; the mother maintained some type of housing, although it was not a fixed location, and the residences were not unsafe or inappropriate for her two children. *Strickland v. Ark. Dep't of Human Servs.*, 103 Ark. App. 193, 287 S.W.3d 633 (2008).

Father did not challenge the finding that the child was adoptable, and thus the court had to examine if the finding that returning the child to the father would subject her to potential harm was clearly erroneous. *Wittig v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 502, 423 S.W.3d 143 (2012).

Issue of whether the condition that caused the child to be removed from his mother's custody, including her failure to protect her children despite her knowledge of her husband's abusive behavior, was remedied hinged on credibility entirely, and the trial court did not believe that the mother had changed and would be able to protect the child, and the court deferred to the trial court on credibility matters. *Aguilera v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 503 (2013).

Because only one ground was necessary to support termination, and the court found no error on one ground, it was unnecessary to address the parents' arguments about another ground. *Henson v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 225, 434 S.W.3d 371 (2014).

Because the court affirmed the finding of termination on one ground, the court did not need to address the mother's argument as to an alternative ground. *Love-day v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 282, 435 S.W.3d 504 (2014).

Mother's argument on appeal from the termination of her parental rights pertained to only one ground, and other grounds for termination were properly alleged and went unchallenged, and the court would not reverse. *Villasaldo v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 465, 441 S.W.3d 62 (2014).

One ground for termination was not alleged, and although the statute was cited in the trial court's order, it was not clear to what extent the trial court relied on it; in any event, it would be inappropriate for the court to rely on a ground not alleged in the petition to support termination. *Villasaldo v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 465, 441 S.W.3d 62 (2014).

Only termination ground alleged by the Department of Human Services was the incarceration ground, and because the department never amended its petition or moved to conform the pleadings to the proof, as the trial court terminated the father's rights on three grounds, review was limited to the incarceration ground. *Moses v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 466, 441 S.W.3d 54 (2014).

Parents challenged the best interest finding and the timing of the hearing, but these issues were not preserved for review because the specific arguments made on appeal were not made to the circuit court

first. *Tuck v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 468, 442 S.W.3d 20 (2014).

Subsequent Factors.

Mother's parental rights were terminated based on subsequent factors because she could not have been a placement option; the mother was incarcerated at the time of the hearing due to her drug involvement, and she could not estimate her sentence or term of imprisonment. *Johnson v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 34 (2015).

Clear and convincing evidence supported termination of parental rights under the subsequent issues ground because a mother was incapable of or indifferent to rehabilitating her circumstances; termination was in the children's best interest due to the risk of harm if they were returned to the mother. Reunification could not have occurred within a time frame that was consistent with the children's developmental needs, and they were found to be adoptable. *Sims v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 137 (2015).

There was sufficient evidence presented to support the termination of a mother's parental rights based on the subsequent factors ground due to her slow response to efforts at treatment, her prior deceitfulness and lack of credibility, and the fact that she wanted the child to know the father's family, despite the fact that the father had been convicted of raping the mother; moreover, termination was in the best interest of the child due to the fact that she was adoptable and based on the potential harm to the child if returned to the mother. Therefore, there was no merit to the mother's appeal, and counsel was permitted to withdraw. *B.M. v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 283 (2015).

Mother's parental rights were properly terminated under the other factors ground in subdivision (b)(3)(B)(vii) of this section because the child and mother tested positive for drugs at his birth, the mother had been in prison, and she continued to use drugs after the child was born. Moreover, a best interest finding was supported by clear and convincing evidence since the child was adoptable, and there was potential harm due to the mother's unresolved drug issue, and lack of a home, job, and stability. *Tribble v. Ark.*

Dep't of Human Servs., 2015 Ark. App. 535 (2015).

Trial court did not clearly err in terminating parental rights because subsequent to the filing of the termination petition the parent pleaded guilty to possession of methamphetamine and was placed on probation, and, within a few months of being on probation, the parent had sex with a minor using an alias. Additionally, the parent had not obtained a stable home during the time when the child was in custody, and it was uncertain whether the parent was in a position to care for the child in the foreseeable future. *Contreras v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 604, 474 S.W.3d 510 (2015).

Termination of the mother's parental rights was affirmed under the subsequent factors ground; there is no limitation in the subsequent factors termination ground that a subsequent factor cannot be a factor that arose while a parent had custody of the juvenile during the dependency-neglect case, and the only temporal limitation is that the factor must arise subsequently to the filing of the original petition for dependency-neglect, which all of the subsequent factors relied on by the circuit court satisfied because they occurred after the initial petition was filed. *Bell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 113, 484 S.W.3d 704 (2016).

Subsequent-factor ground for termination of parental rights consists of multiple elements: first, this ground requires that subsequent issues arose after the original petition was filed, which demonstrate that it is contrary to the juvenile's health, safety, or welfare to place the juvenile with the parent, and second, appropriate family services must have been offered; third, there must be evidence that the parent is indifferent or lacks the capacity to remedy the subsequent factors or rehabilitate the parent's circumstances that prevent placement of the juvenile with that parent. *Bell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 113, 484 S.W.3d 704 (2016).

There is no limitation on the circuit court's consideration of factors that caused a removal after the initiation of the proceeding. *Bell v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 113, 484 S.W.3d 704 (2016).

Although counsel's brief did not discuss the proper ground for terminating the mother's rights to the child, counsel's motion to withdraw was granted as the circuit court did not clearly err in terminating the mother's rights; subsequent to the filing of the original termination petition, the mother had not obtained stable housing or employment and had tested positive for drugs despite the Department of Human Services' reasonable efforts to provide services. *Houseman v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 227, 491 S.W.3d 153 (2016).

Evidence supported a trial court's finding that factors arose subsequent to the filings of the dependency-neglect petitions as to a mother's older child—specifically as to the extent of the mother's increasing mental health issues—and the mother never challenged the appropriateness of any reunification services that were offered. However, there was not enough evidence to indicate other factors or issues in the mere days after the filing of the petition for dependency-neglect as to the infant child. *Taylor v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 453, 503 S.W.3d 813 (2016).

Circuit court's decision that the Department of Human Services proved the subsequent-factors ground for terminating a father's parental rights was affirmed where the circuit court did not find the father credible as to his relationship with the children's abusive mother and the father failed to show he had a support group to help take care of the children if they were returned to his custody. *Martin v. Ark. Dep't of Human Servs.*, 2017 Ark. 115, 515 S.W.3d 599 (2017).

Circuit court did not err in finding that the subsequent-factors ground, subdivision (b)(3)(B)(vii)(a) of this section, supported termination of a father's parental rights where it found that the Department of Human Services had made reasonable efforts to provide services at the permanency-planning hearing, the father had not completed the case plan, he maintained a relationship with the mother despite the fact that her drug use posed a serious threat to the children, and thus the evidence showed that the father manifested an indifference or inability to remedy the conditions that prevented placement. *Terrones v. Ark. Dep't of Human*

Servs., 2017 Ark. App. 115, 515 S.W.3d 144 (2017).

Trial court clearly erred in finding that statutory grounds for termination of a father's parental rights were proved because the order provided no facts to support "subsequent factors" for the father; the only "subsequent factor" the trial court relied on appeared to be that the father had not demonstrated he was a fit and proper parent for the children, but it is the burden of the Department of Human Services to prove a parent is not fit and proper. *Choate v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 319, 522 S.W.3d 156 (2017).

Trial court erred in terminating a mother's parental rights to her children on the ground that her return to living with the father was the subsequent factor that demonstrated placement of the children with her was contrary to their health, safety, or welfare because the Department of Human Services did not prove the father was a threat to the children. *Choate v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 319, 522 S.W.3d 156 (2017).

In terminating a mother's parental rights to her child, the circuit court did not clearly err in finding that the Department of Human Services provided appropriate family services sufficient to support the subsequent-factors ground. *Threadgill v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 426, 526 S.W.3d 891 (2017).

Evidence was sufficient to support termination of the father's parental rights based on the subsequent-factors ground as he failed to engage in services recommended by the Department of Human Services and he was incarcerated during the pendency of the case. After the father met with his caseworker and was to be working on his case plan, he committed three crimes and was sentenced to a three-year term of imprisonment; the crimes were committed in his home during the time when he was supposedly trying to obtain stable housing; at the time of the termination hearing, the father still did not have stable housing or a job; and the father was still on parole. *Rogers v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 469, 529 S.W.3d 249 (2017).

Circuit court's findings supporting termination were not clearly erroneous; although a father's drug use was not a

subsequent factor, there was sufficient evidence of other subsequent factors that were unrelated to his drug use, including criminal charges, periods of incarceration, and marrying the mother after her rights to the children had been terminated. *McKinney v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 475, 527 S.W.3d 778 (2017).

Evidence was sufficient to support termination of the mother's parental rights based on the subsequent-factors ground where she failed to secure appropriate housing, stable employment, and transportation, and she exhibited indifference to remedying the situation. *Dowdy v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 504, 529 S.W.3d 661 (2017).

Trial court did not err in terminating a mother's parental rights based on the subsequent-other-factors ground where her failure to follow the case plan and lack of motivation to resolve her substance-abuse issues until after the termination petition had been filed demonstrated a clear indifference to remedying the circumstances preventing the placement of the children in her custody. *Furnish v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 511, 529 S.W.3d 684 (2017).

Trial court properly terminated a mother's parental rights because there was no doubt that other factors arose after the children were removed from her custody—her persistent alcohol abuse and her ongoing criminal troubles—that compromised her ability to visit the children and prevented their return to her custody. *Brinkley v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 625, 533 S.W.3d 639 (2017).

Termination of the father's parental rights was proper under the other-subsequent factors ground; the father's drug use was a subsequent factor, having only become an issue after the filing of the dependency-neglect petition and because of its continuing nature, and the father's inability to separate himself from the mother was also a subsequent factor, given her drug use. *Johnson v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 221, 547 S.W.3d 489 (2018).

Trial court correctly found that the Department of Human Services proved the subsequent factors ground for termination of parental rights because it found that the mother's most significant prob-

lem was her lack of stability throughout the case and her inability, until the last moment, to obtain housing, employment, and transportation, despite being ordered to do so throughout the duration of the case. *Gonzalez v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 425, 555 S.W.3d 915 (2018).

Trial court did not clearly err in finding that the Department of Human Services (DHS) proved that termination of a mother's parental rights was appropriate because the court reviewed several subsequent factors, including that the mother had not maintained weekly contact with DHS, had not submitted to all requested random drug screens, had submitted a hair-follicle drug screen that was positive for marijuana, and had dyed her hair prior to a hair-follicle test in violation of the court's order not to do so. *James v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 445, 562 S.W.3d 218 (2018).

Trial court's finding that the Department of Human Services proved the "subsequent factors" ground by clear and convincing evidence, and its termination of a mother's parental rights, was not clearly erroneous because the mother was unemployed and lacked her own stable housing, she twice tested positive for methamphetamine, and she had four periods of incarceration after the children's removal. *Redden v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 539, 589 S.W.3d 401 (2019).

Termination of a mother's parental rights to her children was appropriate under the subsequent-factors ground because, despite court orders and the offer of services by the Department of Human Services, the mother failed to consistently participate in individual counseling, used illegal substances, failed to submit to random drug screens, and missed several visits with the children. *McCormick v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 44, 594 S.W.3d 115 (2020).

Termination of the father's parental rights was proper under the subsequent-factors ground because there was evidence that he would continue a relationship with the child's mother, in which there was a history of domestic abuse, as the mother gave birth to another child fathered by the father two weeks before the termination hearing, and the mother and father had repeatedly ended their relationship but then would rekindle it;

and the father had never been in full compliance with the case plan and court orders. *Guerrero v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 160, 595 S.W.3d 437 (2020).

Termination of the mother's parental rights was proper based on the subsequent-other-issues ground and in the children's best interests because she was unable or unwilling to put forth the effort required to make herself a safe, suitable parent for her daughters; she was unable or unwilling to provide her daughters an appropriate place to live or stable and adequate income; she acknowledged that after a year she was still not ready to have her children returned to her custody and instead asked for more time; and there was proof that the girls were adoptable and that there was potential harm to them if returned to their mother's custody (no-merit brief). *Gilbert v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 256, 599 S.W.3d 725 (2020).

Substance Abuse.

Where the mother's children were removed from her home based on drug use, she failed to comply with the permanency plan and other reunification efforts, and her probation was revoked when she tested positive for drugs, the trial court properly terminated her parental rights. *Causer v. Ark. Dep't of Human Servs.*, 93 Ark. App. 483, 220 S.W.3d 270 (2005).

Court erred in terminating a father's parental rights because the father demonstrated commendable resolve in seeking to remedy his drug problem; at all times since the State was involved with the case, the father had not been found to have any drugs in his system, and there was no evidence that the father's drug treatment would not be successful. *Ivers v. Ark. Dep't of Human Servs.*, 98 Ark. App. 57, 250 S.W.3d 279 (2007).

Father's parental rights to his child were properly terminated under subdivision (b)(3)(B)(ix)(a)(3)(B)(i) of this section where there was little likelihood that services to the family would result in successful reunification; the father tested positive for drugs throughout the case, including on the date of the permanency-planning hearing. *Smith v. Ark. Dep't of Health & Human Servs.*, 100 Ark. App. 74, 264 S.W.3d 559 (2007).

Where the father was arrested while driving to obtain opiates with his three-

year-old child, the trial court adjudicated the child dependent based on neglect and the parents' drug abuse; the father was ordered to maintain stable housing and income, complete parenting classes, complete anger-management counseling, and submit to random drug screens. At the termination hearing, witnesses testified as to the father's failure to comply with the court's orders; because he continued to seek opiates, manipulated drug assessments, and did not maintain regular visits with the child, the trial court did not err by terminating his parental rights under subdivision (b)(3)(B)(i)(a) of this section. *Loe v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 607 (2009).

Termination of the mother's parental rights was proper under subdivisions (b)(3)(B)(i)(a), (ii), and (viii)(a) of this section because, by the time she had begun any semblance of serious effort in the case, the child had been in the custody of the Department of Human Services for eight months or more; during that time the mother tested positive for drugs several times; she was arrested and convicted on drug-related charges; the mother failed to obtain a psychological evaluation as ordered; she was inconsistent in visiting the child; and the mother's stated desire to achieve the goals of employment and education, while admirable, did not warrant reversal. *Devon v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 191, 377 S.W.3d 362 (2010).

Termination of parental rights was proper, as at the time of the termination hearing, the 22-month old child had been out of the parent's care for more than 17 months, and the parent had an ongoing drug problem. *Timmons v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 419, 376 S.W.3d 466 (2010).

Clear and convincing evidence supported the termination of a mother's parental rights over her children pursuant to this section; the mother was a long-term drug addict and had made no efforts to comply with the goals of her case plan, including resolving criminal matters and finding suitable housing. *Watkins v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 467 (2010).

Trial court's decision to terminate a mother's parental rights was not clearly erroneous because the mother's testimony that she was living in a hotel and continu-

ing to use drugs well over a year after her children were taken into custody made it clear that the children would be subjected to a substantial risk of harm if they were returned to her custody. *Davis v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 469, 375 S.W.3d 721 (2010), overruled, *Ellis v. Ark. Dep't of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

When a mother and father admitted to being alcoholics, a trial court did not err in terminating the parental rights of the mother and father, pursuant to subdivision (b)(3)(B)(i)(a) of this section, because during the pendency of the case, the mother tested positive for alcohol on two occasions and the father not only tested positive for alcohol but was also arrested for being in control of a vehicle while intoxicated; the child, who was removed from the parents' home at the age of five months old and had been out of the parents' custody for more than a year, suffered from Fetal Alcohol Syndrome. *Pine v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 781, 379 S.W.3d 703 (2010).

Order terminating a father's parental rights to his child pursuant to subdivision (b)(3)(B)(i)(a) of this section was proper because he had a disturbing history of drug abuse and had failed to learn from his previous drug conviction and incarceration; he had lived with the child only a few months during the child's lifetime and seemingly spent much of that time taking drugs. *Hoffman v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 856, 380 S.W.3d 454 (2010).

Trial court properly found that termination of a mother's parental rights was in the best interests of the children because at the termination hearing, the mother had no employment, no acceptable home for the children, and was still experiencing relapses with alcohol and methamphetamine. *Dawson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 106, 391 S.W.3d 352 (2011).

Termination of a mother's parental rights was proper pursuant to subdivision (b)(3)(B) of this section, as the evidence revealed that although the mother stopped using cocaine, the mother could not remain drug-free; the mother completed inpatient drug treatment only to later test positive for marijuana on a number of occasions. *Billings v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 111 (2011).

Trial court did not err in terminating a mother's parental rights to her two children under subdivision (b)(3)(B)(i)(a) of this section because the record was clear that the mother had a problem abusing prescription drugs and refused to acknowledge it; adoptability of the children was not an issue, given testimony that families were prepared to adopt them. *Harper v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 280, 378 S.W.3d 884 (2011).

Trial court did not err in terminating a father's parental rights to his two children pursuant to subdivision (b)(3)(B)(vii)(a) of this section because his continued use of illegal drugs showed an indifference to remedying the problems plaguing the family and potential harm to the children; he failed to submit to random drug screens. *Allen v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 288, 384 S.W.3d 7 (2011).

Termination of the parental rights of appellants to their two minor children was affirmed because despite the services provided by the Department of Human Services, the mother continued to abuse alcohol and thus failed to remedy the conditions that caused the children's removal from her custody. *Burnett v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 596, 385 S.W.3d 866 (2011).

Termination of the parental rights to appellants' three-year old son was affirmed because the court heard evidence that the 17-year-old father consumed alcohol in his home, as shown by the many empty bottles in his room, yet did not attend the drug-and-alcohol assessment for which he was referred. *Landis-Maynard v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 673, 386 S.W.3d 641 (2011).

Court properly terminated parental rights because the parents' drug use led to their inability to care for their children, causing them to leave the children in the custody of family members who could not provide for the children. While the parents had made progress while incarcerated, they had not shown the capacity to remain drug-free outside of prison or to properly provide for their children; they admittedly did not follow the case plan or take advantage of services offered. *Tankersley v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 109, 389 S.W.3d 96 (2012).

Termination of the mother's parental rights was appropriate pursuant to subdivisions (b)(3)(B)(i)(a) and (vii)(a) of this section because she had been unable to adequately deal with her methamphetamine addiction, despite services being offered; she refused to provide samples for several drug tests; she falsified her urine on other drug tests; and she had been held in contempt numerous times for failing drug tests. *Fetters v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 152 (2012).

Termination of a mother's parental rights was in the child's best interest because the children came into state custody due to her arrest for drug-related offenses, the mother chose to use methamphetamine, which only exacerbated her existing drug problem, and a witness recommended to the court that the mother's parental rights be terminated because the children needed permanency. *Gutierrez v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 575, 424 S.W.3d 329 (2012).

Court properly terminated parental rights because the parents had positive drug screens, their drug-and-alcohol assessments diagnosed both parents with cannabis and alcohol dependence, and they had a lengthy history with social services that was related to their drug use, resulting in the child being in foster care for two years. *Kitchen v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 260, 427 S.W.3d 165 (2013).

Termination of a mother's parental rights was in the child's best interests because the mother's rights to five other children had been terminated due to her methamphetamine use, and the mother had undergone intensive therapy and was provided with numerous services on two separate occasions before having her parental rights to those children terminated. Despite losing five children due to her meth use, the mother still used the drug while pregnant. *Porter v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 299, 427 S.W.3d 738 (2013).

Clear and convincing evidence, including evidence that the mother failed to stop using drugs, supported a finding that termination of the mother's parental rights was in the best interest of the children. *Eldredge v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 385 (2014).

Trial court found that the children had been out of the parents' custody for 15

months, that the father failed to follow drug treatment facility recommendations, that he had relapsed and used methamphetamine, that he had pleaded guilty to two offenses and was incarcerated, and that despite services, he still had a drug addiction, and these findings were sufficient to support termination of parental rights based on the failure to remedy ground. *Frisby v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 566 (2014).

Because the Department of Human Services was required to prove only one statutory ground for termination, and one was proven in this case, it was not necessary for the court to consider arguments pertaining to the other statutory grounds. *Frisby v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 566 (2014).

Circuit court did not clearly err in finding that the mother failed to remedy the drug abuse that led to the child's removal, as the mother did not complete treatment until the child had been out of her custody for over a year, and the mother was in a relationship with a former addict and it was unknown if she could remain drug free outside the confines of the rules of her current inpatient treatment. *Harbin v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 715, 451 S.W.3d 231 (2014).

Termination of a mother's parental rights was appropriate under the failure to remedy ground because the mother had a longstanding drug problem, she did not finish drug treatment while incarcerated, and she intentionally avoided drug testing. The mother's self-serving statement that she did not believe that she had an addiction and was not interested in drugs anymore did not have to be believed by the trial court, and the mother's recent progress was not a bar to termination where she failed to demonstrate an ability to remain sober in an unstructured environment for a significant period of time. *Moore v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 87 (2015).

Circuit court did not err by finding that the Department of Human Services proved that terminating the mother's parental rights was in her children's best interest where there was evidence that the mother continued to test positive for drug use on multiple occasions following her participation in a drug-treatment program, she did not provide proof that she attended Narcotics Anonymous meetings,

she failed to obtain and maintain clean, safe, and stable housing until the permanency-planning hearing, and the finding that she did not maintain stable employment was supported by evidence that she had been employed only one month prior to the permanency-planning hearing. *Simmons v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 374, 466 S.W.3d 440 (2015).

Termination of a mother's parental rights was in the best interest of her children because the mother's continued use of illegal drugs for years was sufficient evidence of potential harm; the assessment of best interest was a credibility call, and the appellate court deferred to the circuit court's assessment of the mother's credibility. *Morton v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 388, 465 S.W.3d 871, 465 S.W.3d 871 (2015).

Termination of a mother's parental rights was proper under the failure to remedy ground because the mother did not request financial assistance or other services from the Department of Human Services from the permanency planning order until the date of termination; moreover, the mother did not specifically request additional services during the termination hearing, but only asked for more time. Since the mother did not appeal from prior reasonable efforts findings that were made in this case, they were not reviewed. *Morton v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 388, 465 S.W.3d 871, 465 S.W.3d 871 (2015).

Termination of the mother's parental rights to her twin children was proper and in the children's best interests because the children had been out of their mother's custody for approximately a year and a half at the time of the termination, and, even by the mother's own calculation, she would be unavailable and unable to regain custody of them for another six months; the mother was in a drug-treatment facility where she could not have her children with her and she did not anticipate graduating from the program until June 2015. *Knuckles v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 463, 469 S.W.3d 377 (2015).

Circuit court properly terminated a mother's parental rights as in her child's best interest; the most critical requirement imposed by the court was for the mother to complete inpatient drug treat-

ment, but she never took personal responsibility for her addiction, which demonstrated incapacity or indifference to remedy the issues that caused the removal of her child. *Blankenship v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 620 (2015).

There was no meritorious issue that could be raised on appeal regarding the grounds for termination; the child was removed from the mother's custody when she was arrested on March 27, 2014, the child was adjudicated dependent-neglected based on the mother's drug use, and at the termination hearing in July 2015, the mother was again incarcerated and tested positive for drugs, for which she admitted she needed inpatient drug treatment. *Hunter v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 95 (2016).

Termination of the mother's parental rights was proper and in the child's best interests as there was no clear error in the trial court's finding that the mother had subjected the child to aggravated circumstances. There was little likelihood that services to the family would result in successful reunification as the mother had an admitted problem with drug addiction; she refused rehabilitation services offered by the department; and she would not commit to a timeframe within which she would undergo treatment. *King v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 368 (2016).

Trial court properly terminated a mother's parental rights where the mother had tested positive for drug use, she refused to participate in drug screening or counseling until the petition to terminate had been filed, a therapist and physician testified that continued treatment and progress were needed for at least six months, and the child's behavior had improved dramatically since being placed in foster care. *Garrett v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 401, 499 S.W.3d 659 (2016).

Trial court did not clearly err in terminating a father's parental rights based on aggravated circumstances where giving the father more time to participate in a drug court program was contrary to the statutory mandate to provide permanency for the child. *Helvey v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 418, 501 S.W.3d 398 (2016).

Termination of parental rights was in the child's best interest where the trial court properly considered evidence of the father's past behavior in determining that potential harm could befall the child in his custody, recognized that completion of the drug-court program was a condition of his suspended sentence, and concluded that whether he could maintain his sobriety was uncertain given that he had another year of drug treatment. *Helvey v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 418, 501 S.W.3d 398 (2016).

Circuit court did not err in terminating the father's parental rights on the other factors ground; subsequent factors bearing on the father's parental fitness arose after the filing of the original dependency-neglect petition, including a positive alcohol screen, missed drug screens, and the father's arrests and incarceration on public-intoxication charges, plus he did not begin to comply with the case plan until the last minute. *Sharks v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 435, 502 S.W.3d 569 (2016).

There was no error in the circuit court's potential harm finding; the father missed drug screens and tested positive for cocaine on other screens, and the trial court was not clearly erroneous in finding that the children would be at risk of potential harm if returned to the father's custody due to his ongoing drug usage. *Jackson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 440, 503 S.W.3d 122 (2016).

Clear and convincing evidence showed a mother's parental rights were properly terminated for failure to remedy conditions causing her children's removal from her custody for more than 12 months because the children were taken into custody due to the mother's drug use, and over two years later, the mother continued to test positive for drugs. *Sutton v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 459, 503 S.W.3d 842 (2016).

Mother's parental rights were properly terminated under subdivision (b)(3)(B)(i)(a) of this rule because (1) the mother's child was removed due to the mother's drug abuse, (2) the mother refused drug treatment, and (3) the mother was arrested during the case for possessing marijuana, so the reason for removal was not remedied and could harm the child if the child were returned to the mother. *Sanders v. Ark. Dep't of Human*

Servs., 2016 Ark. App. 462, 503 S.W.3d 128 (2016).

Termination of the mother's parental rights was proper and in the children's best interest because, throughout the case, the mother continued to test positive for illegal substances; although several different drug-treatment programs were recommended and offered, the mother refused to address her drug issues or complete a treatment program; she continued to demonstrate an inability or unwillingness to accept rehabilitation services offered to address her drug use; the case-worker testified that the children were adoptable; and the children were at great risk of potential harm if returned to the mother given her lack of stable housing and continued drug use. *Ware v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 480, 503 S.W.3d 874 (2016).

In a parental rights termination case, there was little likelihood that services to a father would have resulted in successful reunification where he admitted to having a drug problem, he failed to address his drug usage, he had not completed the drug treatment provided and had relapsed, he did not have stable employment, and there was no proof of his current "under the table" employment. *Jones v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 615, 508 S.W.3d 897 (2016).

There was sufficient evidence to support an aggravated circumstances termination of the mother's parental rights; although she completed an inpatient treatment for drug addiction, she failed to follow through with recommended outpatient treatment or attend AA meetings after her release, she had not maintained stable employment, and had not visited the child since removal because of positive drug screens. *Jones v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 615, 508 S.W.3d 897 (2016).

Circuit court did not err in finding that the mother had not remedied the conditions that led to the child's removal from the home where her hospitalization was due to infections caused by drug use, she tested positive for drugs when the child had been in state custody for almost a year, and the court was not required to believe her claim of being drug-free or to conduct a drug test to verify her claim. *Troglin v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 89, 513 S.W.3d 278 (2017).

Termination of the mother's parental rights was in the child's best interests because the circuit court found that the child would be at a substantial risk of serious harm if he were returned to the mother based on her drug use and instability; the circuit court was permitted to weigh the mother's progress toward sobriety, which occurred after the permanency-planning hearing, against the long periods of instability and drug use during the case's course; and the appellate court deferred to the circuit court's assessment of the potential harm the child faced if returned to his mother's custody. *Meredith v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 120, 513 S.W.3d 909 (2017).

Trial court's findings that termination of a mother's and father's parental rights was in the children's best interest was not clearly erroneous where the record demonstrated that they had repeatedly chosen methamphetamine over their children, they admitted that they had not visited the children in over a year, and there was evidence that the children were adoptable. *Ford v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 211 (2017).

Trial court did not clearly err in terminating the mother's parental rights, given that during the time the child was out of the mother's custody, over 18 months, the mother attempted drug treatment unsuccessfully four times and was currently on her fifth attempt, and while her several negative drug tests just prior to the hearing were noted, they were not conclusive. *Duncan v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 252, 520 S.W.3d 307 (2017).

Circuit court did not err in determining that termination of a mother's parental rights was in the best interest of the 15-month-old child where, considering the mother's past behavior, allowing her more time to address her mental health issues was unlikely to be beneficial, she exhibited a lack of initiative in complying with her case plan, she never obtained a sponsor, she tested positive for cocaine a month prior to the hearing, and she candidly admitted drinking green tea in an effort to defeat drug screens. *Wallace v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 376, 524 S.W.3d 439 (2017).

Termination of the mother's parental rights was proper because she had consistently failed to keep her child out of foster

care by returning to drugs each time custody of the child had been returned to her; at the time of the termination hearing, she had been sober approximately three months; the mother had been given numerous chances to benefit from services and keep her daughter with her, but she had returned to drugs each time; and the child needed permanency, and the current foster parents wanted to adopt the child; thus, the trial court did not clearly err in terminating the mother's parental rights and, for the same reasons, in terminating reunification services. *Ladd v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 419, 526 S.W.3d 883 (2017).

Circuit court did not err in finding that it was in the best interest of a child to terminate the mother's parental rights because the mother was dependent on others for income and housing and had unresolved criminal charges, as the mother had significant time remaining in a drug-court program, and if she failed, she could be sentenced to imprisonment for a period of years. Moreover, the child had spent more than half of her life in foster care and people had expressed an interest in adopting the child. *Brasher v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 455, 527 S.W.3d 756 (2017).

Circuit court properly terminated a mother's parental rights to her children under the failure to remedy ground. Although the mother made some progress on her drug issues during the pendency of the case, she did not complete the court-ordered drug treatment; she did not sufficiently demonstrate the capacity to remain drug-free; the children would be subjected to potential instability should the mother again relapse into drug use, which was more than a speculative possibility; the mother's relapse after at least 11 months of court supervision demonstrated the potential harm the children would face if returned to the mother; and the mother did not challenge the trial court's finding regarding the likelihood of the children's adoptability. *Hollinger v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 458, 529 S.W.3d 242 (2017).

Termination of the mother's parental rights was proper under the 12-month failure to remedy ground because it was undisputed that the children were adjudicated dependent-neglected by the court and had remained out of the mother's

custody for over 12 months; the conditions that caused their removal were the mother's drug usage and her inability to properly supervise the children; the Department of Human Services had made reasonable efforts to provide services necessary to achieve reunification; the mother did not complete a 90-day outpatient treatment for drugs and alcohol; she repeatedly tested positive for controlled substances, attempted to manipulate the outcome of several of her drug screens, and failed to show for others; and the children would be at risk of harm if returned to her custody. *Beck v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 467, 528 S.W.3d 869 (2017).

There was sufficient evidence that termination of the mother's parental rights was in the children's best interest because the evidence showed that the mother, despite a year of services, could not maintain sobriety, and that she had used methamphetamine just a week before the termination hearing; the children had been out of the mother's custody for 13 months; she had a two-month trial placement that ended when she was arrested for drug-related crimes; and she testified at the termination hearing that she was incapable of caring for the children at that time and had no concrete timetable for rehabilitation. *Allen v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 489 (2017).

Termination of the mother's parental rights was proper under the failure to remedy ground and was in the child's best interest because it was the mother's second attempt at maintaining sobriety, as the child had previously been adjudicated dependent-neglected based on the mother's drug use; she was still subject to supervised visitation; she continued to abuse drugs 10 months into the case; although the mother remained drug-free for four months, the circuit court found that she was not actually dealing with her drug problem as she refused to seek treatment and had failed to follow the case plan; and the circuit court explained that the mother had a drug addiction and she had not been treated for that disease. *Garner (Conrad) v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 563, 531 S.W.3d 452 (2017).

Circuit court properly terminated a mother's parental rights to her children because the children had been adjudicated

dependent-neglected due to parental unfitness based on the mother's drug use, had been in the custody of the Department of Human Services for over 12 months, evidence at the hearing demonstrated that the mother had failed to resolve her drug problem, even after having completed inpatient drug treatment, her counsel complied with the requirements for no-merit appeals, and the appeal was wholly without merit. *Griffin v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 635 (2017).

Evidence was sufficient to terminate the mother's parental rights on the aggravated-circumstances ground based on a finding that there was little likelihood that further services would result in successful reunification; despite having received drug counseling and drug treatment while incarcerated, the mother testified at the termination hearing that she did not think her drug use had affected her child or her ability to parent her child. *McLemore v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 57, 540 S.W.3d 730 (2018).

Trial court did not err in determining that termination of the mother's parental rights was in the child's best interest; even if the mother was released from prison when she expected, she would not be ready to take custody of the child. Although there was testimony that the mother had secured a home with relatives and a temporary job, she had not demonstrated her sobriety. *McLemore v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 57, 540 S.W.3d 730 (2018).

Sufficient evidence supported the aggravated-circumstances ground for terminating a father's parental rights where the adjudication order stated that he needed to stop drinking alcohol altogether, he tested positive for alcohol throughout the case, his alcohol abuse was a significant problem, and thus there was little likelihood that services would have resulted in successful reunification. *Abdi v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 173, 544 S.W.3d 603 (2018).

It was in the child's best interest to terminate the father's parental rights where the father introduced a risk of potential harm into the child's life when he drank alcohol during an unsupervised visitation, and the father was in denial of his alcohol problem, lied at the termina-

tion hearing about the last time he drank alcohol, and delayed completing his drug-and-alcohol assessment. *Abdi v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 173, 544 S.W.3d 603 (2018).

Trial court's decision to terminate a mother's parental rights based on the subsequent-factors ground was not clearly erroneous where she had received extensive services to address her drug and alcohol problems, she continued to test positive for drugs and alcohol after she was released from residential drug treatment, and she failed to show up for drug screens. *Harjo v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 268, 548 S.W.3d 865 (2018).

Termination of the mother's and the father's parental rights was in the children's best interests because both parents tested positive for methamphetamine two weeks before the termination hearing was more significant than minor incidents of noncompliance; the parents' use of methamphetamine was the primary risk to the children's health, safety, and welfare because the case began when, among other things, a young child and his two parents tested positive for methamphetamine, and they lived in a dirty home in which the children were unsupervised due to the parents' drug use. *Corley v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 397, 556 S.W.3d 538 (2018).

Termination of the mother's parental rights was in the child's best interest because the child was highly adoptable with hundreds of families interested in adopting the child or a child sharing his characteristics; the circuit court considered the mother's newfound efforts toward being drug-free and applauded her efforts in that regard, yet that simply did not outweigh the child's need for permanency after 18 months in foster care; the mother apparently started using drugs after the Department of Human Services (DHS) had begun providing reunification services to her; her drug use continued throughout the remainder of the DHS case; and she tested positive for methamphetamine one month before the termination hearing. *Bridges v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 50, 571 S.W.3d 506 (2019).

Trial court's finding that termination of a mother's parental rights was in the best interest of the mother's children was not

clearly erroneous because the record supported the trial court's finding that the children would be subjected to potential harm if returned to the mother's custody. The mother lacked a stable home two years after the children's removal and had a long history of drug use and had relapsed, and there was testimony that the children were adoptable and in need of permanency. *Middleton v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 97, 572 S.W.3d 410 (2019).

Termination of the mother's parental rights was proper because the child was removed from her custody for failure to protect and drug use; the mother did not complete the recommendations of her first drug-and-alcohol assessment, failed to complete an ordered second drug-and-alcohol assessment, did not attend NA meetings until a month before the termination hearing, tested positive on drug screens, and never admitted that she abused drugs. Termination was in the child's best interest and adoption was upheld rather than placement with the paternal uncle and aunt as potential harm to the child existed due to the mother's drug abuse; she remained unemployed and had not taken steps to reinstate her nursing license, though so ordered; and she had only recently obtained her own housing, but it was acquired and paid for by her father. *Glover v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 278, 577 S.W.3d 13 (2019).

Termination of the mother's parental rights was in the best interests of her twin children because she continued to use illegal drugs throughout the dependency-neglect case (positive tests for THC and two positive hair-follicle tests for cocaine metabolites in July 2018); a caseworker testified that the twins would be at risk of potential harm if returned to the mother's custody; the court-appointed special advocate's report recommended termination based on the mother's drug use and its negative effect on the twins; and a clinical psychologist deferred making a reunification recommendation until the mother had shown sustained abstinence from illicit drugs; further, there was little evidence of a genuine relationship or bond between the twins and their infant sister; and there was no evidence that termination would affect the twins' relationship. *Brown v. Ark. Dep't of Human Servs.*,

2019 Ark. App. 370, 584 S.W.3d 276 (2019).

Appellate court could not say that the trial court clearly erred in terminating the mother's parental rights based on the failure to remedy ground because the children were removed from her custody as a result of her drug abuse; they remained out of her custody for a period of over two years; there was evidence that the mother had not remedied her drug abuse as she admitted having used marijuana about a month before the hearing; and her continued use of illegal drugs after two years of drug-treatment classes and meetings represented potential harm to the children. *Hernandez v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 449, 588 S.W.3d 102 (2019).

Continued drug use demonstrates potential harm sufficient to support a best-interest finding in a termination of parental rights case. *Redden v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 539, 589 S.W.3d 401 (2019).

Although the child was in a foster-care placement with relatives, the trial court did not err by finding that termination of the mother's parental rights was in the child's best interest because the mother tested positive for alcohol three times, including in the interim between the two-day termination hearing, the child had been in foster care for 23 months of her three-year life based on the mother's substance abuse issues, and the mother had relapsed on multiple occasions. *Jackson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 95, 595 S.W.3d 418 (2020).

Termination Not Proper.

Mother's parental rights were improperly terminated because the record contained no information about an order of child support or the payments made by the mother; moreover, the mother had remedied the issues causing removal since she was capable of maintaining housing and utilities without the assistance of the father, she had caught up on her bills, and she was receiving food stamps. It was clearly erroneous to find that additional services would not result in successful reunification with the mother since she was in compliance with the case plan and making progress in therapy. *Duncan v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 489 (2014).

Although initially identified as a putative parent and a paternity test established that he was the father, nothing in the record showed that the father's legal status as a putative parent or biological parent, as defined in § 9-27-303, was established to apply the 12-month time period described in subdivision (b)(3)(B)(i)(b) or (b)(3)(B)(ii)(a) of this section, and therefore the circuit court erred in terminating his parental rights. This interpretation supported the goal of the juvenile system provided in § 9-27-302, which shall be liberally construed. *Earls v. Ark. Dep't of Human Servs.*, 2017 Ark. 171, 518 S.W.3d 81 (2017).

Order terminating a mother's parental rights was reversed where the circuit court had erroneously defined the condition causing removal of the mother's children as poor judgment, her uncontradicted testimony was that her relationship with an inappropriate boyfriend had ended, and there was no evidence that her current boyfriend, who had supported the mother's efforts to maintain sobriety, was a negative influence, and the evidence established that the mother had successfully remedied her drug problems and remedied the other issues that led to the children's removal. *Guthrey v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 19, 510 S.W.3d 793 (2017).

Trial court clearly erred in finding that termination of the mother's parental rights was in the children's best interest where the children were in the custody of their grandmother, the children were strongly bonded with the mother, at the time of the termination the mother lived in appropriate housing and was trying to find employment, she had only a single positive drug test for marijuana several months before the termination hearing, she had ended her relationship with the children's father, who had consistently tested positive for drugs during the case, she had been complying with the case-plan requirements, there was no evidence that she had ever harmed the children, and the only apparent reason for the termination was her lack of financial means. *Bunch v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 374, 523 S.W.3d 913 (2017).

Termination of appellant's parental rights was reversed because the trial court made no finding regarding paternity or whether appellant had contacts with

the children sufficient for parental rights to attach, even though a positive DNA test was admitted into evidence and the DHS specifically requested in its petition that the trial court make a finding of paternity. *Northcross v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 320, 550 S.W.3d 919 (2018).

Trial court erred in terminating a putative father's rights because the Department of Human Services did not prove by clear and convincing evidence that he was the "parent" under § 9-27-303, and the circuit court did not make an express finding that he was the parent, as required before his rights could be terminated under this section. *Terry v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 591, 591 S.W.3d 824 (2019).

Termination Proper.

Termination of a mother's parental rights was appropriate in a case where an infant almost died from being malnourished and children were exposed to a sex offender because the evidence was sufficient to show that potential harm could have resulted from returning the children to the mother since she was unable to learn how to properly feed her children, and she failed to recognize dangerous situations; despite completion of a case plan and numerous services, the mother still had no stable transportation, housing, or employment. An argument that the mother was not provided with meaningful reunification services was not addressed by the appellate court since it was not raised below. *King v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 278 (2014).

Termination of parental rights was not clearly erroneous in part because the mother was incarcerated at the time of the termination hearing for at least another year, and there was no evidence that she could provide for the child; furthermore, she failed to attempt to remedy the issues prohibiting reunification even when she was not incarcerated by refusing services and openly admitting that she missed visitation with the child in part because she was using drugs and lacked a stable home. *Matlock v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 184, 458 S.W.3d 253 (2015).

Mother's claim that the child should have been placed with a relative lacked

merit. According to the public policy of this state, termination and adoption are preferred to permanent relative placement, and the court's order terminating the mother's parental rights did not preclude a family member from seeking the child's adoption. *Matlock v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 184, 458 S.W.3d 253 (2015) (decision under prior versions of statutes).

Termination of parental rights was appropriate because the children were adjudicated dependent-neglected, were out of the parent's custody for 12 months, the conditions that caused the removal were not remedied despite a meaningful effort by the Department of Human Services to correct the conditions, the parent willfully failed to provide significant material support, and the return of the children to the parent was contrary to their health, safety, and welfare. *Herron v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 195 (2015).

Circuit court properly terminated a father's parental rights because the child had been adjudicated dependent-neglected, return of the child to the father's custody was contrary to the child's health, safety, or welfare, the father did not participate in the case plan, manifested incapacity or indifference to remedy the subsequent issues or factors or rehabilitate his circumstances, constructively abandoned the child, and subjected the child to aggravated circumstances. *Shannon v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 227 (2015).

Termination of parental rights was not clearly erroneous because the circuit court found by clear and convincing evidence that it was in the children's best interest as the children were adoptable and there was potential harm to the safety and welfare of the children if they were returned to their parent's custody. Moreover, aggravated circumstances were present as there was little likelihood that continued services would have resulted in successful reunification and the parent had abandoned the children. *Ozuna v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 381, 466 S.W.3d 434 (2015).

Trial court's decision to terminate the mother's parental rights was not clearly erroneous based on the aggravated-circumstances ground and the trial court's finding that there was little likelihood that services would result in successful

reunification. The trial court believed the testimony of the mother's older daughters regarding sexual abuse at the hands of the mother's then husband and the fact that they both told their mother about the abuse, but that the mother chose to ignore that information and continued to allow her then husband access to her younger daughters when they were put in their trial home placement. *Wallace v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 481, 470 S.W.3d 286 (2015).

Trial court's termination of the mother's parental rights under the "other factors" ground in this section was not clearly erroneous, as the evidence showed that the mother lacked insight into her bipolar disorder, refused to acknowledge her mental illness despite participation in counseling, and lacked stable housing and income. *Oldham v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 490, 469 S.W.3d 825 (2015).

There could be no meritorious argument made with respect to grounds for termination of the mother's parental rights for neglect where the record showed that the children were removed from the mother's custody for environmental neglect and failure to protect, she failed to maintain stable housing for more than a month or two throughout the three years that the children were in DHS custody, she failed to complete her counseling sessions, and at the time of the termination hearing the mother was living in a shelter and had not obtained stable housing to which her children could be returned. *Brown v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 513, 470 S.W.3d 690 (2015).

Termination of parental rights upheld. *Conway v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 30, 453 S.W.3d 703 (2015); *Williams v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 171, 458 S.W.3d 271 (2015); *Cox v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 202, 462 S.W.3d 670 (2015); *Gritton v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 219 (2015).

Termination of the mother's parental rights was proper under the other factors ground and was in the children's best interests because the mother failed to complete court-ordered counseling and was noncompliant with taking her medication for mental-health issues; although the mother was partially compliant with the case plan and used some of the appro-

prate family services offered to her, she was not able to demonstrate safe and effective parenting during visits with the children, several of whom had special needs; an adoption specialist testified that there were 58 families willing to adopt a sibling group like the mother's children; and placement of the children in the mother's custody was contrary to their health, safety, and welfare. *Carroll v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 3 (2016).

Trial court did not clearly err in finding that termination of the parents' rights was in the best interest of the children, as neither parent could sustain consistent employment or housing, both tested positive for marijuana shortly before the termination hearing, and after 14 months of involvement from the department, the parents were unable to accept custody of the children. *Dunn v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 34, 480 S.W.3d 186 (2016).

Circuit court properly terminated a mother's parental rights to four children where the children had been outside the mother's home for 12 months without the conditions that caused removal corrected, the mother was currently incarcerated for attempting to run over one of the children's fathers, the children were adoptable, and prior to her incarceration, the mother had not made substantial progress under the permanency plans. *Jones v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 110 (2016).

Termination of a father's parental rights was appropriate because his positive drug tests were a subsequent factor; moreover, the father was difficult to keep track of, he moved numerous times, his expenses were higher than his income, and he demonstrated instability in relationships with women. Termination of the father's rights was in the child's best interest because potential harm was shown based on financial, relationship, and housing instability and uncertainty, as well as the father's continued use of drugs. *Vail v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 150, 486 S.W.3d 229 (2016).

Termination of a mother's parental rights was in the best interest of the child; even though the mother had completed her case plan, it did not achieve the desired result of making her capable to care for the child. After nearly two years of

services, the mother was not employed and was not ready to take care of the child. *Vail v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 150, 486 S.W.3d 229 (2016).

Termination of a mother's parental rights was in the best interest of the children because it was unclear whether the children would have been placed with their father permanently; the children faced future harm if the mother's rights were not terminated based on her severe mental illness. The mother was living in a temporary shelter at the time of termination; moreover, she lacked insight and made no progress in recognizing the extent of her mental illness. *Robinson v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 202, 489 S.W.3d 218 (2016).

Trial court properly terminated a father's parental rights to his child because he did not challenge the court's "best interest" determination, demonstrated a pattern of instability, refused to address his substance-abuse issues, was uncooperative with the Department of Human Services, and failed to comply with the case plan and case orders, such that despite the offer of services, he was incapable of, or indifferent to, remedying the subsequent issues and there was little likelihood that further services would result in the father successfully reunifying with the child. *Shaffer v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 208, 489 S.W.3d 182 (2016).

Termination of a mother's parental rights was not clearly erroneous because clear and convincing evidence supported the decision; proof of only one statutory ground was required, and there was substantial evidence that the mother was unable to correct the conditions that caused the removal. The child, who had been out of the mother's custody for 16 months at the time of the termination hearing, could not have been returned to the mother within a time period commensurate with her developmental needs, if ever. *Greenhaw v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 294, 495 S.W.3d 109 (2016).

Trial court did not err in terminating parents' rights, as efforts to rectify environmental conditions that led to removal of children occurred after hearing, parents failed to complete parenting classes until six weeks after permanency-planning

hearing, and parents did not timely comply with recommendations stemming from psychological evaluation. *Dowden v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 296 (2016).

Evidence was sufficient to support the termination of a mother's parental rights because she did not participate in her case plan after her incarceration, she did not maintain a separate residence from the father, she failed to obtain employment, and she did not complete an evaluation; a best interest finding was not clearly erroneous because the parents admitted to being long-time drug abusers, the father would not submit to drug treatment, the mother refused to obtain separate living arrangements, and two of the children were born with drugs in their system. As to the father, he did not address the issues preventing reunification until more than a year into the case, and significant issues remained. *Wafford v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 299, 495 S.W.3d 96 (2016).

Termination of the mother's parental rights to her three children was proper and in the children's best interests because the children had been out of the mother's custody for 12 months, and she failed to remedy the conditions that had caused the children's removal as the trial court was concerned the mother had not made enough progress to successfully parent her children; while the mother had begun participating in the oldest child's medical visits, there was no indication she would be able to manage that child's sickle-cell anemia on her own; and the trial court found that the mother was not credible, and that she continued to lead a chaotic lifestyle. *Gulley v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 367, 498 S.W.3d 754 (2016).

Circuit court found that the mother had placed the children at substantial risk of serious harm by exposing them to drug sales and methamphetamine, and the resolution of the mother's criminal charges and clean drug screens was not sufficient to remedy the neglect and unfitness that caused the children's removal, plus the mother failed to comply with the case plan, and thus termination of the mother's rights was proper. *Abram v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 437, 502 S.W.3d 563 (2016).

Trial court properly terminated a mother's parental rights to her youngest child because the child had been adjudicated to be dependent-neglected, the mother had subjected the child to aggravated circumstances where she failed to protect him from abuse—multiple broken bones and an injury that had the appearance of a burn that had removed a portion of the child's nose, the treating physician suspected that the child's injuries were the result of abuse, and there was little likelihood that services to the family would result in successful reunification. *Beard v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 467, 503 S.W.3d 89 (2016).

Termination of the mother's parental rights was supported by clear and convincing evidence that the mother took little advantage of the services offered to her, was incarcerated, had borderline intellectual functioning, and continued having interactions with the children's abusive father. *Scarver v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 474 (2016).

Trial court did not err in terminating the mother's parental rights because the children had been adjudicated dependent-neglected after the father furnished alcohol to his 12-year-old daughter and failed to report a sexual assault of his 12-year-old daughter; the children were deemed, by stipulation of the parents, to be at serious risk of harm due to neglect; 14 months after the children's removal, they could not be safely returned to their parents' custody as the conditions causing the children's removal had not been remedied by the parents; the mother was incapable of caring for the children as a result of her stroke; and the children were making remarkable progress in their structured and stable foster-care placement and were adoptable. *Bane v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 617, 509 S.W.3d 647 (2016).

Terminating a mother's parental rights was not error; although she had successfully completed parenting classes, she still had to be redirected during visitation with her children, and thus, there was little likelihood that continued services to the family would have resulted in successful reunification. *Barnes v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 618, 508 S.W.3d 917 (2016).

Trial court properly terminated a mother's parental rights given her failure to

attend counseling and poor decision-making in living with the children's father who was uninterested in working toward reunification, had abused the mother in the past, and who would not follow court orders. *Holland v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 205 (2017).

Termination of the father's parental rights was proper as the appropriate services had been provided to the father. While it was true that it was not until the third order that he was ordered to live separately from his live-in girlfriend, it had been ordered from the beginning of the case that his child was not to have any unsupervised contact with her, and the father had not remedied that; the father stated repeatedly during the case that he would not remove the girlfriend from his home, and if he did, it would be only temporary, which indicated that the father had no intention of putting his child first; and the father did not indicate what services could have been offered to him that would have remedied the situation. *Grosso v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 305, 521 S.W.3d 519 (2017).

Termination of the mother's parental rights was proper because, with respect to the failure-to-remedy ground, the trial court found that the children had been subjected to neglect and abuse; and, although the mother was subsequently able to have the children returned to her, they were removed from her custody again for neglect and abuse. *Edgar v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 312, 522 S.W.3d 127 (2017).

Evidence was sufficient to terminate the mother's parental rights as she failed to remedy her parental unfitness due to her instability; the mother suffered from mental instability, and instability relating to her housing and employment; the caseworker was not sure whether the mother was drug free as she had not been able to administer any drug screens due to the mother's unstable housing; despite submitting to a psychological evaluation, the mother had not followed the recommendations to completion and had missed several appointments; and she had failed to exercise visitation for over a year. *Barris v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 380 (2017).

Trial court did not clearly err in terminating a mother's parental rights where it

was open to considering improvements the mother had made after the first permanency-planning hearing, the goal of permanency planning was not changed until after the second permanency planning hearing, and even after the additional time following the second hearing, the mother was still not ready to have the children returned to her custody. *Jameson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 503, 529 S.W.3d 692 (2017).

Termination of the mother's parental rights was proper, as the mother was offered many services, but the mother submitted to only one random drug screen, did not obtain a drug-and-alcohol assessment or a psychological evaluation, completed parenting classes before the case was opened, was homeless, had no job, and failed to maintain contact with the department. *Marion v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 591 (2017).

Termination of a mother's parental rights was appropriate because the mother did not demonstrate the ability to adequately supervise the children; although the mother had maintained sobriety and had gone for months without a positive drug screen, she had not demonstrated the ability to maintain a sober lifestyle and provide for the children's needs. The mother had not yet begun a newly obtained job and the house in which she and the children were to live was not ready for occupation. *Gann v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 275, 550 S.W.3d 18 (2018).

Trial court did not err in finding that the Department of Human Services had made reasonable efforts to provide services that addressed the father's needs due to his disability, because there was no specific accommodation that the father requested that was denied, he never requested the "auxiliary parent aide" that he suggested on appeal, the case never progressed to the point at which an at-home trial placement was feasible, and there was no indication that any additional services would have changed the outcome of the case or made it more likely for the child to be placed in the father's custody. *Harris v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 421, 560 S.W.3d 778 (2018).

Trial court did not err by finding that the father had not remedied his drug issues because he tested positive for co-

caine three times after being identified as the child's father, and the trial court found that he had not been credible or truthful regarding his drug use or affiliations with drug users. *Harris v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 421, 560 S.W.3d 778 (2018).

Termination of a mother's parental rights and placement of the child in the permanent custody of the father was not contrary to subdivision (a)(3) of this section; the trial court found that returning the child to the mother's home was contrary to the child's health, safety, and welfare, and the statutory provision did not prohibit the termination of only one parent's rights. *White v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 459, 558 S.W.3d 423 (2018).

Evidence was sufficient to establish neglect that endangered a child's life as the infant suffered severe injuries from rat bites while in the father's care. Furthermore, returning the child to the father's custody would have exposed the child to a significant risk of potential harm as the father was incarcerated, suffered from addiction issues, lacked stable housing, lacked a stable income, and faced pending felony charges. *Elliott v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 526, 565 S.W.3d 487 (2018).

Circuit court did not clearly err in terminating a mother's parental rights to her children; while the mother maintained her sobriety, she failed to follow the court's other orders and show that she could maintain stability in housing and employment, her lack of urgency supported a finding of indifference to remedying subsequent factors despite appropriate family services being offered, and termination was in the children's best interests where, despite 20 months of services from the Department of Human Services, the mother did not yet have a home that even she deemed appropriate for the children, and the children had spent a significant portion of their lives in foster care. *Easter v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 441, 587 S.W.3d 604 (2019).

Termination of parental rights upheld. *Buckley v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 266, 520 S.W.3d 716 (2017); *Krecker v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 537, 530 S.W.3d 393 (2017); *Burleson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 616, 535

S.W.3d 655 (2017); *Stampley v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 628, 533 S.W.3d 669 (2017); *Hudson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 629, 536 S.W.3d 617 (2017); *Fisher v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 693, 542 S.W.3d 168 (2017); *Mouse v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 705 (2017); *Ewasiuk v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 59, 540 S.W.3d 318 (2018); *Brown v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 104, 542 S.W.3d 899 (2018); *McKinney v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 140, 544 S.W.3d 101 (2018); *Bolden v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 218, 547 S.W.3d 129 (2018); *Lawrence v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 223, 548 S.W.3d 192 (2018); *Bradley v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 233 (2018); *Taylor v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 264 (2018); *McKinney v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 325, 551 S.W.3d 412 (2018); *Rylie v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 366, 554 S.W.3d 275 (2018); *Bentley v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 374, 554 S.W.3d 285 (2018); *Bryant v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 375, 554 S.W.3d 295 (2018); *Smith v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 380, 555 S.W.3d 896 (2018); *Rivera v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 405, 558 S.W.3d 876 (2018); *King v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 464, 562 S.W.3d 226 (2018); *Lancaster v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 557, 566 S.W.3d 484 (2018); *Hedrick v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 568 (2018); *Androff v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 602, 567 S.W.3d 533 (2018); *Anderson v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 13, 568 S.W.3d 768 (2019); *Hegi v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 20, 568 S.W.3d 776 (2019); *Smith-McLeod v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 25, 571 S.W.3d 491 (2019); *Moore v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 37, 568 S.W.3d 305 (2019); *Reyes-Ramos v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 46, 571 S.W.3d 32 (2019); *Hopfner v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 236, 576 S.W.3d 76 (2019); *Allen-Grace v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 286, 577 S.W.3d 397 (2019); *Jones v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 299, 578

S.W.3d 312 (2019); *Choate v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 387, 587 S.W.3d 553 (2019); *Bratton v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 392, 586 S.W.3d 662 (2019); *Crawford v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 474, 588 S.W.3d 383 (2019); *Smallwood v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 598, 589 S.W.3d 523 (2019).

Termination of parental rights upheld (no-merit brief). *Conley v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 267 (2016); *Norton v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 285 (2017); *Allison v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 424 (2017); *Cotton v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 479, 529 S.W.3d 264 (2017); *Mercado v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 495 (2017); *Snow v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 655 (2017); *Hall v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 4 (2018); *Baltimore v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 313, 578 S.W.3d 319 (2019); *McDaniel v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 335, 579 S.W.3d 184 (2019); *Taylor v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 358, 584 S.W.3d 266 (2019); *Howard v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 381 (2019); *Danes v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 388, 585 S.W.3d 731 (2019); *Beaird v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 415, 585 S.W.3d 172 (2019); *Cogburn v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 446, 587 S.W.3d 609 (2019); *Westbrook v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 504 (2019); *Pace v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 533, 589 S.W.3d 433 (2019); *Hardiman v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 542, 589 S.W.3d 412 (2019).

Circuit court's aggravated-circumstances finding and termination of a father's parental rights to his child was not clearly erroneous because the father continued to allow the mother to live with him despite her severe violence toward the children in the past and even when he knew that doing so would jeopardize his parental rights to the child. *Tovias v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 147, 596 S.W.3d 66 (2020).

Circuit court did not clearly err in finding that termination of the mother's parental rights was in the children's best interest because even though she did not

directly and physically abuse the children, her failure to protect one child from her boyfriend's abuse resulted in the child's death, the child suffered severe injuries prior to her death, but the mother did nothing to stop that abuse, and she continued to expose the other children to the violent environment. Further, the mother did not recognize her responsibility for the child's death or for the other children's exposure to the violence. *Randall-McCoy v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 325, 603 S.W.3d 637 (2020).

Termination of parental rights upheld. *Carpenter v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 21, 592 S.W.3d 718 (2020); *Peterson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 75, 595 S.W.3d 38 (2020); *Hensley v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 78, 595 S.W.3d 68 (2020); *Musick v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 87, 595 S.W.3d 406 (2020); *Chavez v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 91, 595 S.W.3d 59 (2020); *Phillips v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 169, 596 S.W.3d 91 (2020); *Martin v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 192, 596 S.W.3d 98 (2020); *Johnson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 313, 603 S.W.3d 630 (2020); *Belt v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 315, 603 S.W.3d 203 (2020); *Kilpatrick v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 342, 602 S.W.3d 777 (2020); *Guerrero v. State Dep't of Human Servs.*, 2020 Ark. App. 428 (2020); *Trogstad v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 443 (2020); *Wheeler v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 453 (2020); *Sneed v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 462 (2020).

Termination of parental rights upheld (no-merit brief). *Wallace v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 67, 595 S.W.3d 396 (2020); *Holt v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 170, 597 S.W.3d 142 (2020); *Frisby v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 197, 598 S.W.3d 63 (2020); *Shipp v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 230, 599 S.W.3d 149 (2020); *Anderson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 401 (2020); *Powell v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 438 (2020); *Thomas v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 457 (2020); *Smith v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 470 (2020).

Timeliness of Hearing.

Failure of a trial court to hold a termination of parental rights hearing within 90 days of the filing of the petition, as required by subsection (d) of this section, did not deprive the trial court of jurisdiction and the trial court did not err in denying the mother's motion to dismiss; the mother failed to prove prejudice by the delay. *Hill v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 108, 389 S.W.3d 72 (2012).

Even if the trial court did not articulate good cause for setting the termination of parental rights hearing outside the 90-day limit of subsection (d) of this section, the father's argument failed; although subsection (d) provides that a hearing "shall" be held within 90 days, the trial court did not lose jurisdiction as the General Assembly did not provide a sanction for an untimely filing and the father was not harmed by the delay. *Caruthers v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 230, 519 S.W.3d 350 (2017).

Unfitness of Parent.

Merely being uninterested is insufficient to support termination of parental rights, but a lack of interest which results in a failure to learn the special feeding techniques and therapies required to care for a child is tantamount to unfitness. *Beeson v. Ark. Dep't of Human Servs.*, 37 Ark. App. 12, 823 S.W.2d 912 (1992).

Parent held not to have the capacity to be the type of parent needed by child with high needs, in light of testimony by therapists and psychiatrist that parent could not provide stable environment child required because of parent's mental illness. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

Parental rights terminated where there was clear and convincing evidence that the child was the victim of neglect or abuse perpetrated by the parents. *Gregg v. Ark. Dep't of Human Servs.*, 58 Ark. App. 337, 952 S.W.2d 183 (1997).

Where the court terminated a mother's parental rights to her oldest child after a two-year custody proceeding in which the mother demonstrated she was an unfit parent and indifferent to the needs of her children by failing to comply with the court's orders to get counseling and disassociate herself from an abusive man, the court also properly terminated her parental rights to her younger son, who had

only been in her custody for five months, as there was little likelihood that continued services would result in reunification. *Trout v. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004).

Parents' argument that the Department of Human Services failed to present clear and convincing evidence that it made reasonable efforts to rehabilitate the father was rejected because the department was relieved of the burden to provide reunification services where the father was found to have subjected the daughter to sexual abuse, which was aggravated circumstances under subdivision (b)(3)(B)(ix) of this section. *Sparkman v. Ark. Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006).

Where a daycare worker reported that a child had an adult-sized hand print on her face, she often wore dirty diapers, and her clothes smelled of marijuana, the father partially complied with the case plan and court orders while the child was in foster custody but did not correct the underlying problems that led to the child's abuse and neglect; the father failed to take his medication, his mental illness was untreated, and his work history showed frequent job changes. The trial court did not err by terminating the father's parental rights under subdivision (b)(3)(B)(i)(a) of this section based on a finding that the child would be subject to potential harm if returned to his custody. *Byers v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 581 (2009).

When the children were removed from the home and adjudicated dependent based on physical abuse and parental unfitness due to drug use, the mother failed to maintain appropriate housing and employment, did not follow the recommendations of her psychological evaluation, or remain drug free. The trial court did not err by terminating her parental rights under subdivision (b)(3)(B)(vii)(a) of this section; the mother's appeal was frivolous. *McKellar v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 781 (2009).

Clear and convincing evidence supported the termination of a parent's parental rights where the psychological examiner who examined the parent testified that the parent presented with frank paranoia and mistrust and that any possibility for reunification would come only after the parent received psychiatric

treatment and substance-abuse analysis. *Aday v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 677 (2010).

Termination of a father's parental rights was proper under this section as it removed the children from the father's continuing violence and was in the best interests of the children; the fact that the children were remaining with the mother did not deprive the children of permanency as the mother was their most stable influence. *Hayes v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 21 (2011).

Trial court properly terminated the mother's parental rights to her son because she failed to seek treatment for drug abuse even though she had 16 months to comply with the case plan, she continued to associate with drug addicts, she did not maintain stable employment and housing, she did not have reliable transportation even though it was critical due to her son's medical needs for his cancer, and she showed little interest in learning about her son's cancer until shortly before termination. *Gaskill v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 610 (2013).

There was sufficient evidence to support the finding of a statutory ground for termination where the child had been outside the mother's care for 12 months, the mother failed to remedy the cause for removal, i.e., her drug use. *Jung v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 523, 443 S.W.3d 555 (2014).

Termination of the parental rights of a putative father and stepfather and the mother to the mother's biological children was appropriate because the father physically abused the children and the mother consistently failed to protect the children and denied the abuse even in the face of

the father's criminal prosecution for the abuse. *Nguyen v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 565 (2014).

Giving due regard to the trial court's opportunity to judge the credibility of the witnesses, the trial court did not clearly err in finding that the mother remained an unfit parent. The mother remained married to the stepfather and there was evidence that he parented by use of fear, the mother's daycare plan was contrary to the prohibition against having other adults living with and caring for her children, and she exercised poor judgment when visiting the children. In light of the list of extensive services provided, the trial court did not clearly err in finding that DHS made meaningful efforts to rehabilitate the mother. *Hernandez v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 250, 492 S.W.3d 119 (2016).

Voluntary Termination.

Discretion was not abused where a circuit court did not allow a mother to execute a consent to termination; she was not present at the hearing to even voice her consent, and it had already been concluded that the case was an involuntary termination based on the mother's credibility and the circumstances. *Russell v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 734 (2014).

Cited: *Office of Child Support Enforcement v. Lawrence*, 57 Ark. App. 300, 944 S.W.2d 566 (1997); *Tackett v. Merchant's Sec. Patrol*, 73 Ark. App. 358, 44 S.W.3d 349 (2001); *Burks v. Ark. Dep't of Human Servs.*, 76 Ark. App. 71, 61 S.W.3d 184 (2001); *Murray v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 431, 429 S.W.3d 288 (2013).

9-27-342. Proceedings concerning juveniles for whom paternity not established.

(a) Absent orders of a circuit court or another court of competent jurisdiction to the contrary, the biological mother, whether adult or minor, of a juvenile for whom paternity has not been established is deemed to be the natural guardian of that juvenile and is entitled to the care, custody, and control of that juvenile.

(b) The biological mother, the putative father, the juvenile himself or herself, or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may bring an action to establish paternity or support of a juvenile for whom paternity has not been established.

(c)(1) If the juvenile is not born when the parties appear before the court, the court may hear evidence and issue temporary orders and findings pending the birth of the juvenile.

(2) In the event the final order is contrary to the temporary one, the court shall render judgment for the amount paid under the temporary order against the petitioner if such was the biological mother.

(3) If the mother dies before the final order, the action may be revived in the name of the juvenile, and the mother's testimony at the temporary hearing may be introduced in the final hearing.

(d) Upon an adjudication by the court that the putative father is the father of the juvenile, the court shall follow the same guidelines, procedures, and requirements as established by the laws of this state applicable to child support orders and judgments entered upon divorce. The court may award court costs and attorney's fees.

(e) If paternity has been established in a court of competent jurisdiction, a father may petition the court in the county where the juvenile resides for custody of the juvenile. The court may award custody to a father who has had paternity established if the court finds by a preponderance of the evidence that:

(1) He is a fit parent to raise the juvenile;

(2) He has assumed his responsibilities toward the juvenile by providing care, supervision, protection, and financial support for the juvenile; and

(3) It is in the best interest of the juvenile to award custody to the father.

(f) At the request of either party in a paternity action, the trial court shall direct that the putative father, biological mother, and juvenile submit to one (1) or more blood tests or other scientific examinations or tests, including deoxyribonucleic acid typing, to determine whether or not the putative father can be excluded as being the father of the juvenile and to establish the probability of paternity if the test does not exclude the putative father.

(g) The tests shall be made by a duly qualified physician or physicians, or by another duly qualified person or persons, not to exceed three (3), to be appointed by the court.

(h)(1) The results of the tests shall be receivable in evidence.

(2)(A) A written report of the test results by the duly qualified expert performing the test, or by a duly qualified expert under whose supervision and direction the test and analysis have been performed, certified by an affidavit duly subscribed and sworn to by the expert before a notary public, may be introduced in evidence in illegitimacy actions without calling the expert as a witness. If either party shall desire to question the expert, the party shall have the expert subpoenaed within a reasonable time prior to trial.

(B) If the results of the paternity tests establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the juvenile and after corroborating testimony of the mother in regard to access during the probable

period of conception, this shall constitute a prima facie case of establishment of paternity and the burden of proof shall shift to the putative father to rebut such proof.

(3) The experts shall be subject to cross-examination by both parties after the court has caused them to disclose their findings.

(i) Whenever the court orders the blood tests to be taken and one (1) of the parties refuses to submit to the test, that fact shall be disclosed upon the trial unless good cause is shown to the contrary.

(j) The costs of the test and witness fees shall be taxed by the court as other costs in the case.

(k) Whenever it shall be relevant to the prosecution or the defense in a paternity action, blood tests that exclude third parties as the father of the juvenile shall be the same as set out in subsections (f) and (g) of this section.

(l) The refusal of a party to submit to a genetic or other ordered test is admissible at a hearing to determine paternity only as to the credibility of the party.

(m) If a male witness offers testimony indicating that his act of intercourse with the mother may have resulted in the conception of the juvenile, the court may require the witness to submit to genetic or other tests to determine whether he is the juvenile's father.

History. Acts 1989, No. 273, § 41; 1995, No. 1184, § 20; 2003, No. 1166, § 20; 2015, No. 825, § 4.

Amendments. The 2015 amendment substituted “a juvenile for whom pater-

nity has not been established” for “an illegitimate juvenile” in (a); and substituted “for whom paternity has not been established” for “alleged to be illegitimate” in (b).

CASE NOTES

Attorney's Fees.

Both § 9-10-109(a) and subsection (d) of this section provide a statutory basis for awarding attorney's fees in paternity actions. *Beavers v. Vaughn*, 41 Ark. App. 96, 849 S.W.2d 6 (1993).

Trial court did not abuse its discretion in denying mother's motion for attorney's

fees in a paternity action; the trial court considered the proper factors in deciding the mother's attorney's fee motion and she failed to show an abuse of discretion by the trial court. *Davis v. Williamson*, 359 Ark. 33, 194 S.W.3d 197 (2004).

Cited: *Doughty v. Douglas*, 2017 Ark. App. 445, 527 S.W.3d 732 (2017).

9-27-343. Appeals.

(a) All appeals from juvenile cases shall be made to the Supreme Court or to the Court of Appeals in the time and manner provided for appeals in the Arkansas Rules of Appellate Procedure.

(b) In delinquency cases, the petitioner may appeal only under those circumstances that would permit the state to appeal in criminal proceedings.

(c) Pending an appeal from any case involving a juvenile out-of-home placement, the juvenile division of circuit court retains jurisdiction to conduct further hearings.

History. Acts 1989, No. 273, § 42; 1999, No. 401, § 15; 2003, No. 1166, § 21; 2003, No. 1319, § 25.

Cross References. Review of termination of parental rights, § 9-27-360.

CASE NOTES

ANALYSIS

Collateral Proceeding.

Due Process.

Lower Court Jurisdiction.

Collateral Proceeding.

State was not required to satisfy the requirements of Ark. R. App. P. Crim. 3, because the State's appeal challenging the court's jurisdiction to consider the petition to remove a former juvenile-delinquent's name from the sex-offender registry was an appeal arising from a collateral proceeding. *State v. V.H.*, 2013 Ark. 344, 429 S.W.3d 243 (2013).

Due Process.

Due process requirements ordinarily accorded criminal defendants extend to safe-

guard the juvenile's appeal. *Gilliam v. State*, 305 Ark. 438, 808 S.W.2d 738 (1991).

Lower Court Jurisdiction.

Trial court retains jurisdiction to hold an additional hearing subsequent to the filing of a notice of appeal and the lodging of a trial transcript where the case involves a juvenile out-of-home placement; therefore, a trial court was allowed to terminate a mother's parental rights while her appeal from a decision regarding a petition for dependency-neglect was pending. *Harwell-Williams v. Ark. Dep't of Human Servs.*, 368 Ark. 183, 243 S.W.3d 898 (2006).

Cited: *Valdez v. State*, 33 Ark. App. 94, 801 S.W.2d 659 (1991); *D.J. v. State*, 308 Ark. 37, 821 S.W.2d 782 (1992).

9-27-344. Monthly report.

The circuit court shall submit monthly to the Director of the Administrative Office of the Courts a report in writing upon forms to be furnished by the director showing the number and disposition of juveniles brought before the juvenile division of circuit court together with such other information regarding those cases as may be requested by the director.

History. Acts 1989, No. 273, § 43; 2003, No. 1166, § 22.

9-27-345. Admissibility of evidence.

(a) Juvenile adjudications of delinquency for offenses for which the juvenile could have been tried as an adult may be used at the sentencing phase in subsequent adult criminal proceedings against those same individuals.

(b)(1) No other evidence adduced against a juvenile in any proceeding under this subchapter nor the fact of adjudication or disposition shall be admissible evidence against the juvenile in any civil, criminal, or other proceeding.

(2) However, the evidence shall be admissible when proper in subsequent proceedings against the same juvenile under this subchapter.

History. Acts 1989, No. 273, § 44; 1993, No. 535, § 5; 1993, No. 551, § 5.

CASE NOTES

Cited: Bell v. State, 371 Ark. 375, 266 S.W.3d 696 (2007).

9-27-346. Support orders.

(a) If it appears at the adjudication or disposition hearing in any case brought under this subchapter that the parents or any other person named in the petition who is by law required to provide support for the juvenile is able to contribute to the support of the juvenile, the court shall issue an order requiring the person to pay a reasonable sum pursuant to the guidelines for child support and the family support chart for the support, maintenance, or education of the juvenile to any person, agency, or institution to whom custody is awarded.

(b) The court, upon proper motion, may make such adjustments and modifications of the order as may appear reasonable and proper.

(c) The court shall also order the persons required by law to support a juvenile to disclose their places of employment and the amounts earned by them. Anyone who refuses to disclose such information may be cited for contempt of court.

History. Acts 1975, No. 451, § 31; A.S.A. 1947, § 45-431; Acts 1993, No. 1152, § 1; 1997, No. 1296, § 38; 2003, No. 1166, § 23.

A.C.R.C. Notes. This section was formerly codified as § 9-27-357.

CASE NOTES

Cited: Pender v. McKee, 266 Ark. 18, 582 S.W.2d 929 (1979).

9-27-347. Probation reports.

(a) The probation officer shall make and keep a complete history of each case before disposition and during the course of any probation imposed by the circuit court.

(b)(1) It is the intention of this section to require an intelligent and thorough report of each juvenile before probation and during probation as to heredity, environment, condition, treatment, development, and results.

(2) The report shall contain among other information the age, sex, nativity, residence, education, mentality, habits, whether married or single, and employment and income and shall be continued so as to show the condition of the person during the term of his or her probation and the results of probation in the case.

(3) The report shall never be disclosed except as required by law or directed by the court.

(c) The probation officer shall furnish to each person released on probation a written statement of the terms and conditions of probation

and shall report to the court any violation or breach of the terms and conditions so imposed.

History. Acts 1975, No. 451, § 34; A.S.A. 1947, § 45-434; Acts 2003, No. 1166, § 24. **A.C.R.C. Notes.** This section was formerly codified as § 9-27-358.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

CASE NOTES

Cited: K.N. v. State, 360 Ark. 579, 203 S.W.3d 103 (2005).

9-27-348. Publication of proceedings.

No information by which the name or identity of a juvenile who is the subject of proceedings under this subchapter may be ascertained shall be published by the news media without written order of the circuit court.

History. Acts 1975, No. 451, § 43; A.S.A. 1947, § 45-443; Acts 2003, No. 1166, § 25. **A.C.R.C. Notes.** This section was formerly codified as § 9-27-364.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Constitutional Issues. 37 A.L.R.6th 55.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Proce-

dural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

CASE NOTES

Applicability.

Juveniles arrested for felonies, but not charged as delinquent juveniles were not “the subject of proceedings,” and therefore this section does not specifically apply. This construction is confirmed by the

phrase “without written order of the juvenile court,” which clearly means that this section is to apply only to cases filed in the juvenile court. *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992).

9-27-349. Compliance with federal acts.

The Division of Youth Services shall have the responsibility for the collection, review, and reporting of statistical information on detained or incarcerated juveniles, for adult jails, adult lock-ups, and juvenile detention facilities to assure compliance with the provisions of Pub. L. No. 93-415, the Juvenile Justice and Delinquency Prevention Act of 1974.

History. Acts 1975, No. 451, § 46; A.S.A. 1947, § 45-446; Acts 1989, No. 430, § 1; 1989, No. 514, § 1; 2007, No. 587, § 24.

A.C.R.C. Notes. This section was formerly codified as § 9-27-365.

Acts 1993, No. 1296, § 2, provided, in part: "By July 1, 1993, the Governor shall evaluate effectiveness of the Division of Children and Family Services within the Department of Human Services in regard to its responsibilities toward Arkansas youths involved with the juvenile justice system. Upon completion of this evaluation, the Governor may approve the establishment of a new division within the Department of Human Services devoted entirely to handling the problems of youths involved with the juvenile justice system."

Acts 1993, No. 1296, § 4, provided: "(a) Upon determination by the Governor that a reallocation of resources is necessary for the efficient and effective implementation of the restructuring of the child welfare system, the Director of the Department of

Human Services, under the direction of the Governor, shall have the authority to request, from the Chief Fiscal Officer of the State, a transfer of appropriations established in this act, and positions established by this act and/or funds provided herein, between appropriations and funds within the Department of Human Services as required to implement changes in the child welfare system. The Chief Fiscal Officer of the State, prior to approving the request, shall submit his recommendation to the Arkansas Legislative Council for its review.

"(b) If it is determined that the requested transfer should be made, the Chief Fiscal Officer of the State shall initiate the necessary documents to reflect the transfer upon the fiscal records of the State Treasurer, the State Auditor, the Chief Fiscal Officer of the State and the affected state agencies."

U.S. Code. The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in this section, is codified as 34 U.S.C. § 11101 et seq.

9-27-350. Compacts to share costs.

Nothing in this subchapter shall prohibit two (2) or more counties, cities, or school districts of this state from agreeing by compact to share the costs of court personnel or juvenile facilities to serve both or all of the counties so agreeing.

History. Acts 1975, No. 451, § 49; A.S.A. 1947, § 45-449; Acts 2003, No. 1166, § 26.

A.C.R.C. Notes. This section was formerly codified as § 9-27-366.

9-27-351. Escape considered an act of delinquency.

The escape of a juvenile from the locked portion of a juvenile facility is an act of delinquency.

History. Acts 1979, No. 815, § 6; A.S.A. 1947, § 45-452.

A.C.R.C. Notes. This section was formerly codified as § 9-27-368.

9-27-352. [Repealed.]

A.C.R.C. Notes. The amendment of § 9-27-352(d) by Acts 2009, No. 334, § 1, was superseded by the repeal of § 9-27-352 by Acts 2009, No. 956, § 22. As amended by Acts 2009, No. 334, § 1, § 9-27-352(d) read as follows:

“(d)(1) When a court orders that a juvenile have a safety plan that restricts or requires supervised contact with another juvenile or juveniles as it relates to the safety of a student, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student safety be provided to the school principal and superintendent where the juvenile is enrolled.

“(2) When a court order amends or removes a safety plan outlined in subdivision (d)(1) of this section, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan be provided to the school principal and superintendent where the juvenile is enrolled.

“(3)(A) A superintendent may provide verbal notification only to school officials as necessary to implement the safety plan ordered by the court to ensure student safety.

“(B) The verbal notification shall be provided to:

“(i) Assistant principal(s);

“(ii) School counselor(s);

“(iii) School employee(s) who is primarily responsible for the juvenile’s learning environment in the school where the juvenile is currently enrolled; and

“(iv) Bus drivers, if applicable.

“(4) The principal and superintendent shall maintain a copy of the court order or information concerning the court order and safety plan under this section.

“(5) Any school official that receives a court order or information concerning the

court order and safety plan under this subsection (d) shall:

“(A) Maintain the confidentiality of and sign a statement not to disclose the information or court order and safety plan;

“(B) Include the information in the juvenile’s permanent educational records; and

“(C)(i) Treat the information and documentation contained in the court order as education records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed on January 1, 2007.

“(ii) The local education agency shall not release, disclose, or make available the information and documentation contained in the court order for inspection to any party except as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, as it existed on January 1, 2007.

“(iii) However, under no circumstances shall the local education agency release, disclose, or make available for inspection to the public, any college, university, institution of higher learning, vocational or trade school, or any past, present, or future employer of the student the court order or safety plan portion of a student record.

“(6) When a student attains an age that he or she is no longer under the jurisdiction of the juvenile court, the safety plan and the order regarding the safety plan shall be removed from the school’s permanent records and destroyed.”

Publisher’s Notes. This section, concerning confidentiality of records, was repealed by Acts 2009, No. 956, § 22. The section was derived from Acts 1993, No. 408, § 1; 1999, No. 954, § 1; 2001, No. 1582, § 3; 2003, No. 1166, § 27; 2007, No. 49, § 1.

9-27-353. Duties and responsibilities of custodian.

(a) It shall be the duty of any person or agency appointed as the custodian of any juvenile in a proceeding under this subchapter to care for and maintain the juvenile and to see that the juvenile is protected, properly trained and educated, and has the opportunity to learn a trade, occupation, or profession.

(b)(1) The person or agency appointed as the custodian of a juvenile in a proceeding under this subchapter has the right to obtain medical

care for the juvenile, including giving consent to specific medical, dental, or mental health treatments and procedures as required in the opinion of a duly authorized or licensed physician, dentist, surgeon, or psychologist, whether or not such care is rendered on an emergency, inpatient, or outpatient basis.

(2) If there is an open dependency-neglect proceeding, the custodian shall not make any of the following decisions without receiving express court approval:

(A) Consent to the removal of bodily organs, unless the procedure is necessary to save the life of the juvenile;

(B) Consent to withhold life-saving treatments;

(C) Consent to withhold life-sustaining treatments; or

(D) The amputation of any body part, unless the procedure is necessary in an emergency to save the life of the juvenile.

(c) The custodian has the right to enroll the juvenile in school upon the presentation of an order of custody.

(d) The custodian has the right to obtain medical and school records of any juvenile in his or her custody upon presentation of an order of custody.

(e) Any agency appointed as the custodian of a juvenile has the right to consent to the juvenile's travel on vacation or similar trips.

(f)(1) It shall be the duty of every person granted custody, guardianship, or adoption of any juvenile in a proceeding under or arising out of a dependency-neglect action under this subchapter to ensure that the juvenile is not returned to the care or supervision of any person from whom the child was removed or any person the court has specifically ordered not to have care, supervision, or custody of the juvenile.

(2) This section shall not be construed to prohibit these placements if the person who has been granted custody, guardianship, or adoption obtains a court order to that effect from the juvenile division of circuit court that made the award of custody, guardianship, or adoption.

(3) Failure to abide by subdivision (f)(1) of this section is punishable as a criminal offense under § 5-26-502(a)(3).

(g) The court shall not split custody, that is, grant legal custody to one (1) person or agency and grant physical custody to another person or agency.

History. Acts 2001, No. 1503, § 15; 2007, No. 587, § 25; 2009, No. 956, § 23; 2013, No. 1055, § 12; 2015, No. 825, § 5.

Amendments. The 2015 amendment added “unless the procedure is necessary

in an emergency to save the life of the juvenile” in (b)(2)(D).

Cross References. Interference with court-ordered custody, § 5-26-502.

9-27-354. Progress reports on juveniles.

(a)(1) The court may order progress reports from a service provider whenever a juvenile is placed out of home and in a setting other than a Department of Human Services foster home.

(2) The order shall:

- (A) Set forth the schedule for the progress reports; and
- (B) Identify the service provider responsible for submitting the progress reports.
- (3) The service provider shall be provided a copy of the written court order by:
 - (A) Certified mail, restricted delivery; or
 - (B) Process server.
- (4) Failure to follow the order of the court shall subject the service provider to contempt sanctions of the court.
 - (b) A progress report shall include, but not be limited to the:
 - (1) Reason for admission;
 - (2) Projected length of stay;
 - (3) Identified goals and objectives to be addressed during placement;
 - (4) Progress of the juvenile in meeting goals and objectives;
 - (5) Barriers to progress;
 - (6) Significant behavioral disruptions and response of provider; and
 - (7) Recommendations upon the juvenile's release.
 - (c) The service provider shall immediately report any incidents concerning the juvenile's health or safety to:
 - (1) The juvenile's attorney or attorney ad litem; and
 - (2) The custodian of the juvenile.

History. Acts 2003, No. 988, § 1.

9-27-355. Placement of juveniles.

- (a) The court shall not specify a particular provider for placement of a foster child.
- (b)(1)(A) When the Department of Human Services takes custody of a juvenile under § 12-18-1001, or when the court determines that a juvenile shall be removed from his or her home under this subchapter, the department shall conduct an immediate assessment to locate:
 - (i) A noncustodial parent of the juvenile;
 - (ii) Recommended relatives of the juvenile, including each grandparent of the juvenile, and all parents of the juvenile's sibling if the parent has custody of the sibling; and
 - (iii) Fictive kin identified by the juvenile as one (1) or more persons who play or have a significant positive role in his or her life.
- (B)(i) If there is a safety issue identified from a Child Maltreatment Central Registry check or criminal background check, the department is not required to provide further assessment or notice to the persons identified under subdivision (b)(1)(A) of this section.
- (ii) If there is not a safety issue identified in a Child Maltreatment Central Registry check or criminal background check regarding all the persons identified under subdivision (b)(1)(A) of this section, the department shall provide in writing to the persons identified the following notice:
 - (a) A statement saying that the juvenile has been or is being removed from his or her parent;

(b) An explanation concerning how to participate and be considered for care, placement, and visitation with the juvenile;

(c) Information needed for a child welfare safety check and home study, if the person is interested in placement;

(d) Information about provisional relative foster care, fictive kin, and other supportive benefits available through the department;

(e) A statement saying that failure to timely respond may result in the loss of opportunities to be involved in the care, placement, and visitation with the juvenile; and

(f) The name, phone number, email address, and physical address of the caseworker and supervisor assigned to the case.

(C) If the court has not transferred custody to a noncustodial parent, relative, or other individual, or the department has not placed the juvenile in provisional relative placement or fictive kin placement, the department shall continue its assessment under subdivisions (b)(1)(A) and (B) of this section throughout the case.

(D) The department shall provide upon request of the court, parties to the proceeding, or counsel for the parties to the proceeding a record of the efforts made to locate the noncustodial parent, relatives, fictive kin, or other persons identified under subdivision (b)(1)(A) of this section and the results of the assessment, including the following information concerning the identified person:

(i) Name;

(ii) Last known address and phone number;

(iii) The appropriateness of placement based on the department's assessment of the person; and

(iv) Other identifying or relevant information to the extent known by the department.

(E)(i) A relative or fictive kin identified by the department under subdivision (b)(1)(A) of this section shall be given preferential consideration for placement if the relative or fictive kin meets all relevant protective standards and it is in the best interest of the juvenile to be placed with the relative or fictive kin.

(ii) In all placements, preferential consideration for a relative or fictive kin shall be given at all stages of the case.

(iii) If the court denies placement with a relative or fictive kin, the court shall make specific findings of fact in writing regarding the considerations given to the relative or fictive kin and the reasons the placement was denied.

(iv) The court shall not base its decision to place the juvenile solely upon the consideration of the relationship formed between the juvenile and a foster parent.

(F) The court may transfer custody to any relative or any other person recommended by the department, the parent, or any party upon review of a home study, including criminal background and child maltreatment reports, and a finding that custody is in the best interest of the child.

(2) Placement or custody of a juvenile in the home of a relative, fictive kin, or other person shall not relieve the department of its responsibility to actively implement the goal of the case.

(3)(A) The juvenile shall remain in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined under § 9-28-402 until the home is opened as a regular foster home, as a provisional foster home if the person is a relative to one (1) of the children in the sibling group, including step-siblings, or the court grants custody of the juvenile to the relative, fictive kin, or other person after a written approved home study is presented to the court.

(B) For placement only with a relative or fictive kin:

(i) The juvenile and the juvenile's siblings or step-siblings may be placed in the home of a relative or fictive kin on a provisional basis for up to six (6) months pending the relative or fictive kin's home being opened as a regular foster home;

(ii) If the relative or fictive kin opts to have his or her home opened as a provisional foster home, the relative or fictive kin shall not be paid a board payment until the relative or fictive kin meets all of the requirements and his or her home is opened as a regular foster home;

(iii) Until the relative or fictive kin's home is opened as a regular foster home, the relative or fictive kin may:

(a) Apply for and receive benefits that the relative or fictive kin may be entitled to due to the placement of the juvenile in the home, such as benefits under the Transitional Employment Assistance Program, § 20-76-401, and the Supplemental Nutrition Assistance Program; and

(b) Receive child support or any federal benefits paid on behalf of the juvenile in the relative or fictive kin's home; and

(iv) If the relative or fictive kin's home is not fully licensed as a foster home after six (6) months of the placement of the juvenile and the siblings or step-siblings in the home:

(a) The department shall remove the juvenile and any of the siblings or step-siblings from the relative or fictive kin's home and close the relative or fictive kin's provisional foster home; or

(b) The court shall remove custody from the department and grant custody of the juvenile to the relative or fictive kin subject to the limitations outlined in subdivision (b)(4) of this section.

(4) If the court grants custody of the juvenile and any siblings or step-siblings to the relative, fictive kin, or other person:

(A)(i) The juvenile and any siblings or step-siblings shall not be placed back in the custody of the department while remaining in the home of the relative, fictive kin, or other person.

(ii) The juvenile and any siblings or step-siblings shall not be removed from the custody of the relative, fictive kin, or other person, placed in the custody of the department, and then remain or be returned to the home of the relative, fictive kin, or other person while remaining in the custody of the department;

(B) The relative, fictive kin, or other person shall not receive any financial assistance, including board payments, from the department,

except for financial assistance for which the relative, fictive kin, or other person has applied and for which the relative, fictive kin, or other person qualifies under the program guidelines, such as the Transitional Employment Assistance Program, § 20-76-401, food stamps, Medicaid, and the federal adoption subsidy; and

(C) The department shall not be ordered to pay the equivalent of board payments, adoption subsidies, or guardianship subsidies to the relative, fictive kin, or other person as reasonable efforts to prevent removal of custody from the relative, fictive kin, or other person.

(c)(1)(A) The court may order a juvenile who is in the custody of the department to be placed in a trial home placement with a parent of the juvenile or the person from whom custody of the juvenile was removed for a period of:

(i) No longer than sixty (60) days; or

(ii) More than sixty (60) days but no longer than one hundred eighty (180) days with the consent of the department.

(B) The department may place a juvenile who is in its custody in a trial home placement with a parent of the juvenile or the person from whom custody of the juvenile was removed for no longer than one hundred eighty (180) days.

(C) A trial home placement with a parent who did not have custody of the juvenile at the time of the removal of the juvenile and placement into the custody of the department may occur only after the court or the department determines that:

(i) The trial home placement is in the best interest of the juvenile;

(ii) The noncustodial parent does not have a restriction on contact with the juvenile; and

(iii) There is no safety concern with the trial home placement after reviewing:

(a) The criminal background of the noncustodial parent;

(b) The home of the noncustodial parent and each person in the home of the noncustodial parent; and

(c) Other information in the records of the department, including without limitation records concerning foster care, child maltreatment, protective services, and supportive services.

(2)(A) At every stage of the case, the court shall consider the least restrictive placement for the juvenile and assess safety concerns that prevent either a trial home placement or the juvenile from being returned to or placed in the custody of the parent of the juvenile.

(B) The court shall detail the safety concerns in subdivision (c)(2)(A) of this section in its written order.

(C) Failure to complete a case plan is not a sufficient reason alone to deny the placement of the juvenile in the home of a parent of the juvenile.

(D) A trial home placement may be made with a parent of the juvenile or the person from whom custody of the juvenile was removed.

(3) At the end of the trial home placement:

(A) The court shall place custody of the juvenile with the parent of the juvenile or the person from whom custody of the juvenile was removed; or

(B) The department shall return the juvenile to a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402.

(d) When a juvenile leaves the custody of the department and the court grants custody to the parent or another person, the department is no longer legal custodian of the juvenile, even if the juvenile division of circuit court retains jurisdiction.

History. Acts 2003, No. 1319, § 26; 2005, No. 874, § 1; 2007, No. 587, §§ 26, 27; 2011, No. 591, § 7; 2013, No. 478, § 1; 2013, No. 1055, §§ 13, 21; 2017, No. 1116, § 1; 2019, No. 541, § 9.

Amendments. The 2017 amendment rewrote (b)(1); inserted “fictive kin” in (b)(2); in (b)(3)(A), substituted “relative, fictive kin, or other person” for “relative or person”; inserted “fictive kin” throughout (b)(4); inserted the second occurrence of “or other person” in (b)(4)(B); added “or

other person” in (b)(4)(C); rewrote (c)(1); inserted present (c)(2); redesignated former (c)(2) as (c)(3); in (c)(3), substituted “At the end of the trial placement” for “At the end of sixty (60) days”; and made stylistic changes.

The 2019 amendment redesignated and rewrote former (c)(1) as (c)(1)(A); added (c)(1)(B) and (c)(1)(C); substituted “alone” for “in and of itself” in (c)(2)(C); rewrote (c)(3); and made stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Juvenile Code, 26 U. Ark. Little Rock L. Rev. 417.

Survey of Legislation, 2005 Arkansas General Assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

CASE NOTES

ANALYSIS

Placement With Relatives.
Preservation of Argument.

Placement With Relatives.

Circuit court properly terminated a mother’s parental rights to her child because the statutory provision for preferential consideration of placement with relatives was not found in the termination statute, and that preference was not relevant when considering termination of parental rights. *Donley v. Ark. Dep’t of Human Servs.*, 2014 Ark. App. 335 (2014).

Circuit court clearly erred in denying a father’s motion to place a child with the child’s paternal uncle and the uncle’s wife, who were stationed in Germany, where a home study did not show anything suggesting that placement with the relatives was not in the child’s best interests or that the relatives were unfit, it failed to con-

duct a mandatory review hearing required by § 9-27-337, and thus it had inappropriately ignored the statutory preference for relative placement in subdivision (b)(1) of this section and § 9-28-105. *Ellis v. Ark. Dep’t of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

Ad litem’s argument that the statutory preference for placement with relatives applies only to the initial placement was clearly wrong. Nowhere in subdivision (b)(1) of this section is there a limit to “initial placement.” To the extent that the Court of Appeals has said this in *Davis v. Ark. Dep’t of Human Servs.*, 2010 Ark. App. 469, 375 S.W.3d 721, and other cases, the Court of Appeals is overruled. *Ellis v. Ark. Dep’t of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

Circuit court did not err in terminating a father’s parental rights on the ground that there was an available and appropri-

ate relative placement with the father's mother where placement with the mother was considered on multiple occasions, but was denied because she did not have any income, relied solely on another son's disability benefits, and wanted to maintain contact between the child and the father. *Rosenbaum v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 680, 537 S.W.3d 282 (2017).

Decision to forego a relative-placement option with the Indiana grandparents in favor of terminating the mother's parental rights was clearly erroneous because the grandparents wanted to be involved in the case; the grandparents consistently attempted to communicate with some Arkansas authority about the children; the Department of Human Services did not fulfill its duty under this section to try to locate the grandparents and communicate with them; the grandparents loved their grandchildren, had visited them, provided them gifts, wished to keep them in the family, and doggedly pursued that course; and the grandparents had a longstanding relationship with all four of the mother's children and stated that they would facilitate visits between all the children. *Clark v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 223, 575 S.W.3d 578 (2019).

In a dependency-neglect case, children were not entitled to reversal of an order

granting permanent custody to their paternal uncle and aunt, where children argued instead for termination of parental rights and adoption. The circuit court did make a finding that termination of parental rights was not in the children's best interest; further, there is no remedy provided by the legislature for lack of a home study in the home-study requirement set forth in this section, and the evidence relied on by the children—that their aunt and uncle were stellar and that the children were thriving there—negated their argument that without a home study, the evidence was insufficient to support custody being placed with the aunt and uncle. *Minor Children v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 588, 589 S.W.3d 495 (2019).

Preservation of Argument.

To the extent that the father argued that his mother should have been given preference in place of termination of parental rights, the father failed to appeal from the order setting the goal of the case to termination of parental rights and adoption. *Edwards v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 37, 480 S.W.3d 215 (2016).

Cited: *Andrews v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 22, 388 S.W.3d 63 (2012).

9-27-356. Juvenile sex offender assessment and registration.

(a) If a juvenile is an adjudicated delinquent for any of the following offenses, the court shall order a sex offender screening and risk assessment:

- (1) Rape, § 5-14-103;
- (2) Sexual assault in the first degree, § 5-14-124;
- (3) Sexual assault in the second degree, § 5-14-125;
- (4) Incest, § 5-26-202; or
- (5) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303.

(b)(1) The court may order a sex offender screening and risk assessment if a juvenile is adjudicated delinquent for any offense with an underlying sexually motivated component.

(2) The court may require that a juvenile register as a sex offender upon recommendation of the Sex Offender Assessment Committee and following a hearing as set forth in subsection (e) of this section.

(c) The juvenile division of circuit court judge may order reassessment of the sex offender screening and risk assessment by the committee at any time while the court has jurisdiction over the juvenile.

(d) Following a sex offender screening and risk assessment, the prosecutor may file a motion to request that a juvenile register as a sex offender at any time while the court has jurisdiction of the delinquency case if a juvenile is found delinquent for any of the offenses listed in subsection (a) of this section.

(e)(1) The court shall conduct a hearing within ninety (90) days of the registration motion.

(2)(A) The juvenile defendant shall be represented by counsel, and the court shall consider the following factors in making its decision to require the juvenile to register as a delinquent sex offender:

- (i) The seriousness of the offense;
- (ii) The protection of society;
- (iii) The level of planning and participation in the alleged offense;
- (iv) The previous sex offender history of the juvenile, including whether the juvenile has been adjudicated delinquent for prior sex offenses;

(v) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;

(vi) The sex offender assessment and any other relevant written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(vii) Any other factors deemed relevant by the court.

(B) However, under no circumstances shall the exercise by the juvenile of the right against self-incrimination, the right to an adjudication hearing or appeal, the refusal to admit to an offense for which he or she was adjudicated delinquent, or the refusal to admit to other offenses in the assessment process be considered in the decision whether to require registration.

(f)(1) The court shall make written findings on all the factors in subsection (e) of this section.

(2) Upon a finding by clear and convincing evidence that a juvenile should or should not be required to register as a sex offender, the court shall enter its order.

(g) When the juvenile division of circuit court judge orders a juvenile to register as a sex offender, the judge shall order either the Division of Youth Services or a juvenile probation officer to complete the registration process by:

- (1) Completing the sex offender registration form;
- (2) Providing a copy of the sex offender registration order, fact sheet, registration form, and the Juvenile Sex Offender Rights and Responsibilities Form to the juvenile and the juvenile's parent, guardian, or custodian and explaining this information to the juvenile and the juvenile's parent, guardian, or custodian;
- (3) Mailing a copy of the registration court order, fact sheets, and registration form to the Arkansas Crime Information Center, Sex Offender Registry Manager, 322 Main St #615, Little Rock, AR 72201;
- (4) Providing local law enforcement agencies where the juvenile resides a copy of the sex offender registration form; and

(5) Ensuring that copies of all documents are forwarded to the court for placement in the court file.

(h) The juvenile may petition the court to have his or her name removed from the sex offender register at any time while the court has jurisdiction over the juvenile or when the juvenile turns twenty-one (21) years of age, whichever is later.

(i) The juvenile division of circuit court judge shall order the juvenile's name removed from the sex offender register upon proof by a preponderance of the evidence that the juvenile does not pose a threat to the safety of others.

(j) If the court does not order the juvenile's name removed from the sex offender register, the juvenile shall remain on the sex offender register for ten (10) years from the last date on which the juvenile was adjudicated a delinquent or found guilty as an adult for a sex offense or until the juvenile turns twenty-one (21) years of age, whichever is longer.

(k) Once a juvenile is ordered to register as a sex offender, he or she shall be subject to the registration requirements set forth in §§ 12-12-904, 12-12-906, 12-12-908, 12-12-909, and 12-12-912.

History. Acts 2003, No. 1265, § 1;
2005, No. 1191, § 10.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Procedural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to

Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Juvenile Sex Offenders, 26 U. Ark. Little Rock L. Rev. 419.

CASE NOTES

ANALYSIS

Jurisdiction.

Recommendation.

Registration Proper.

Written Findings.

Jurisdiction.

Court had jurisdiction to remove appellee's name from the Arkansas sex-offender registry, because the plain language of the statute provided that the court had jurisdiction to consider the petition either while the court still had jurisdiction over the juvenile or when the juvenile turned age 21. *State v. V.H.*, 2013 Ark. 344, 429 S.W.3d 243 (2013).

Recommendation.

Appellant was adjudicated delinquent for the offense of sexual assault in the second degree, which is an explicitly enumerated offense listed in subsection (a) of this section. Although appellant asserted that the trial court did not receive the requisite recommendation from the Sex Offender Assessment Committee to order him to register as a sex offender, there is no requirement of a recommendation from the Sex Offender Assessment Committee for offenses listed in subsection (a), as is evident from subsection (d). *J.L.W. v. State*, 2019 Ark. App. 40, 570 S.W.3d 480 (2019).

Registration Proper.

Finding that the juvenile needed to register as a sexual offender was proper pursuant to subsection (e) of this section where his multiple sexual offenses were serious and where he had exhibited manipulative behavior by infiltrating his best friend's family and then sexually abusing their daughter; further, the juvenile's level of planning and participation weighed against him. *L.W. v. State*, 89 Ark. App. 318, 202 S.W.3d 552 (2005).

Trial court abided by the prohibition contained in this section not to consider a juvenile's refusal to admit the offense because although the trial court did mention the juvenile's refusal to admit that he raped his cousin, it expressly stated that it did not take that fact into consideration in deciding whether the juvenile was to register as a juvenile sex offender; instead, the trial court focused on that portion of the Community Notification Risk Assessment and testimony indicating that the juvenile failed to make progress in the program specially designed for him that did not require him to admit his transgressions. *T.Y.R. v. State*, 2010 Ark. App. 475 (2010).

Trial court's conclusion that defendant juvenile had to register as a sex offender was not clearly erroneous because the trial court found that the juvenile's prospects for rehabilitation were unlikely; that finding was based on testimony and evidence that, after almost two years, the juvenile had failed to make significant progress in treatment and that the prognosis for his completing the program was poor. *T.Y.R. v. State*, 2010 Ark. App. 475 (2010).

Trial court properly denied a juvenile's motion to dismiss the State's motion requesting that the juvenile be required to register as a sex offender under this section where he had been adjudicated delin-

quent for an offense under subsection (b) of this section, which authorized the trial court to hold a hearing and require registration when the assessment resulted in a recommendation that the juvenile be required to register. *W.J.S. v. State*, 2016 Ark. App. 310, 495 S.W.3d 649 (2016).

Circuit court did not clearly err in finding that a juvenile should be ordered to register as a sex offender where the risk assessment showed that he had a history of sexually aggressive behaviors and that, despite treatment at two residential facilities and an outpatient facility, he continued to display deviant sexual arousal toward his mother and younger children, and despite progress at a treatment facility, he continued to have deviant sexual urges and admitted forgetting the consequences of his actions once those urges were aroused. *W.J.S. v. State*, 2017 Ark. App. 47, 512 S.W.3d 688 (2017).

Written Findings.

Trial court erred in failing to make specific written findings on each of the factors in subdivision (e)(2)(A) of this section; simply listing the statutory factors did not constitute written findings. *W.J.S. v. State*, 2016 Ark. App. 310, 495 S.W.3d 649 (2016).

Order requiring a juvenile to register as a sex offender was remanded where the circuit court merely recited the proper statutory factors to be considered but failed to make written findings on the factors as required by this section. *D.S. v. State*, 2017 Ark. App. 485, 528 S.W.3d 878 (2017).

Trial court failed to make specific written findings on each statutory factor in this section, as required; thus, reversal and remand were necessary. *A.M. v. State*, 2018 Ark. App. 622 (2018).

Cited: *C.M. v. State*, 2010 Ark. App. 695 (2010).

9-27-357. Deoxyribonucleic acid samples.

(a) A person who is adjudicated delinquent for the following offenses shall have a deoxyribonucleic acid sample drawn:

- (1) Rape, § 5-14-103;
- (2) Sexual assault in the first degree, § 5-14-124;
- (3) Sexual assault in the second degree, § 5-14-125;
- (4) Incest, § 5-26-202;
- (5) Capital murder, § 5-10-101;

- (6) Murder in the first degree, § 5-10-102;
 - (7) Murder in the second degree, § 5-10-103;
 - (8) Kidnapping, § 5-11-102;
 - (9) Aggravated robbery, § 5-12-103;
 - (10) Terroristic act, § 5-13-310; and
 - (11) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.
- (b) The court shall order a fine of two hundred fifty dollars (\$250) unless the court finds that the fine would cause an undue hardship.
- (c)(1) Only a juvenile adjudicated delinquent for one (1) of the offenses listed in subsection (a) of this section shall have a deoxyribonucleic acid sample drawn upon intake at a juvenile detention facility or intake at a Division of Youth Services facility.
- (2) If the juvenile is not placed in a facility, the juvenile probation officer to whom the juvenile is assigned shall ensure that the deoxyribonucleic acid sample is drawn.
- (d) All deoxyribonucleic acid samples taken under this section shall be taken in accordance with rules promulgated by the State Crime Laboratory.

History. Acts 2003, No. 1265, § 5[4]; 2015, No. 1084, § 1; 2017, No. 367, § 9; 2019, No. 315, § 720.

A.C.R.C. Notes. Acts 2003, No. 1265 did not contain a Section 3.

Amendments. The 2015 amendment added "Only" at the beginning of (c)(1).

The 2017 amendment added (a)(11).

The 2019 amendment substituted "rules" for "regulations" in (d).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Family Law, Juvenile Sex Offenders, 26 U. Ark. Little Rock L. Rev. 419.

9-27-358. [Repealed.]

Publisher's Notes. This section, concerning placement, staffing and planning, was repealed by Acts 2005, No. 1191, § 7.

The section was derived from Acts 2003, No. 1809, § 17.

9-27-359. Fifteenth-month review hearing.

(a) A hearing shall be held to determine whether the Department of Human Services shall file a petition to terminate parental rights if:

(1) A juvenile has been in an out-of-home placement for fifteen (15) continuous months, excluding trial placements and time on runaway status; and

(2) The goal at the permanency planning hearing was either reunification or Another Planned Permanent Living Arrangement (APPLA).

(b) The circuit court shall authorize the department to file a petition to terminate parental rights unless:

(1)(A)(i) The child is being cared for by a relative or relatives;

(ii) Termination of parental rights is not in the best interest of the child;

(iii) The relative has made a long-term commitment to the child; and

(iv) The relative is willing to pursue adoption, guardianship, or permanent custody of the juvenile; or

(B)(i) The child is being cared for by his or her parent who is in foster care; and

(ii) Termination of parental rights is not in the best interest of the child;

(2)(A) The department has documented in the case plan a compelling reason why filing a petition is not in the best interest of the child; and

(B) The court approves the compelling reason as documented in the case plan; or

(3) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, the services the department deemed necessary for the safe return of the child to the child's home if reunification services were required to be made to the family.

(c) If the court determines the permanency goal to be adoption, the department shall file a petition to terminate parental rights no later than the fifteenth month of the child's entry into foster care.

(d) If the court finds that the juvenile should remain in an out-of-home placement, either long-term or otherwise, the juvenile's case shall be reviewed every six (6) months, with an annual permanency planning hearing.

(e) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

History. Acts 2005, No. 1191, § 5; 2011, No. 793, § 8; 2011, No. 1175, § 10; 2013, No. 1055, § 14.

CASE NOTES

ANALYSIS

Failure to Preserve.

Permanent Custody to Relatives.

Termination.

Untimely Filing.

Failure to Preserve.

As parents failed to appeal prior reasonable-efforts findings regarding reunification services offered to them pursuant to § 9-27-338 and this section, an appellate court was precluded from reviewing those findings for the time periods covered by the prior orders. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 522, 385 S.W.3d 367 (2011).

Permanent Custody to Relatives.

Given that this section requires a trial court to authorize a termination of parental rights petition except on limited grounds after 15 months, the trial court's decision to award permanent-relative custody for parents' children, and still provide an opportunity for visitation with the parents, did not constitute error. *Anderson v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 522, 385 S.W.3d 367 (2011).

Termination.

Neither § 9-27-338 nor § 9-27-359 required that the mother be given 15 months to improve her situation and parenting skills, especially in light of her

failure to improve her parenting skills in the 19-month period before her parental rights to another child were terminated. While it is permissible to allow 15 months (or more) in some cases, it is not a requirement. *Benson v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 65 (2018).

Untimely Filing.

Trial court did not abuse its discretion in failing to dismiss a petition to terminate parental rights that was untimely

filed under subsection (c) of this section; there was no sanction for this failure, and the statutory language did not indicate that an untimely filing resulted in a loss of jurisdiction. Moreover, the parents failed to show that they were prejudiced by the delay. *Newman v. Ark. Dep't of Human Servs.*, 2016 Ark. App. 207, 489 S.W.3d 186 (2016).

Cited: *Cox v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 202, 462 S.W.3d 670 (2015).

9-27-360. Review of termination of parental rights.

(a) After an order of termination of parental rights, the circuit court shall review the case following the termination hearing at least every six (6) months until permanency is achieved, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(b) The court shall determine and shall include in its orders whether:

(1) The case plan, services, and current placement meet the juvenile's special needs and best interest, with the juvenile's health, safety, and educational needs specifically addressed;

(2) The Department of Human Services has made reasonable efforts to finalize a permanency plan for the juvenile; and

(3) The case plan is moving toward an appropriate permanent placement for the juvenile.

(c) In making its findings, the court shall consider the extent of the compliance of the department and the juvenile with the case plan and court orders to finalize the permanency plan.

(d) A written order shall be filed by the court or by a party or a party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

History. Acts 2005, No. 1191, § 5; 2007, No. 587, § 28.

9-27-361. Court reports.

(a)(1) Seven (7) business days before a scheduled dependency-neglect review hearing, including the fifteenth-month review hearing and any post-termination of parental rights hearing, the Department of Human Services and a court-appointed special advocate, if appointed, shall:

(A) Distribute a review report to all the parties or their attorneys and the court-appointed special advocate, if appointed; or

(B) Upload into a shared case management database an electronic copy of the court report.

(2)(A) The court report prepared by the department shall include a summary of the compliance of the parties with the court orders and

case plan, including the description of the services and assistance the department has provided and recommendations to the court.

(B) In cases in which a child has been returned home, the department's review report shall include a description of any services needed by and requirements of the parent or parents, including, but not limited to, a safety plan to ensure the health and safety of the juvenile in the home.

(C)(i) In cases in which a juvenile has been transferred to the custody of the department, the department's court report shall outline the efforts made by the department to identify and notify adult grandparents and other adult relatives that the juvenile is in the custody of the department.

(ii) The department's court report shall list all adult grandparents and other adult relatives notified by the department and the response of each adult grandparent or other adult relative to the notice, including:

(a) The adult grandparent or other adult relative's interest in participating in the care and placement of the juvenile;

(b) Whether the adult grandparent or other adult relative is interested in becoming a provisional foster parent or foster parent of the juvenile;

(c) Whether the adult grandparent or other adult relative is interested in kinship guardianship, if funding is available; and

(d) Whether the adult grandparent or other adult relative is interested in visitation.

(3) The report prepared by the court-appointed special advocate shall include, but is not limited to:

(A) Any independent factual information that he or she feels is relevant to the case;

(B) A summary of the compliance of the parties with the court orders;

(C) Any information on adult relatives, including their contact information and the volunteer's recommendation about relative placement and visitation; and

(D) Recommendations to the court.

(4)(A) At a review hearing, the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record.

(b)(1) Seven (7) business days before a scheduled dependency-neglect permanency planning hearing, the department and the court-appointed special advocate, if appointed, shall:

(A) Distribute a permanency planning court report to all of the parties or their attorneys and the court-appointed special advocate, if appointed; or

(B) Upload into a shared case management database an electronic copy of the court report.

(2) The permanency planning court report prepared by the department shall include, but not be limited to, the following:

(A) A summary of the compliance of the parties with the court orders and case plan, including the description of the services and assistance the department has provided;

(B) A list of all the placements in which the juvenile has been;

(C) A recommendation and discussion regarding the permanency plan, including:

(i) The appropriateness of the plan;

(ii) A timeline; and

(iii) The steps and services necessary to achieve the plan, including the persons responsible; and

(D) The location of any siblings, and if separated, a statement for the reasons for separation and any efforts to reunite or maintain contact if appropriate and in the best interest of the siblings.

(3) The report prepared by the court-appointed special advocate shall include, but is not limited to:

(A) Any independent factual information that he or she feels is relevant to the case;

(B) A summary of the compliance of the parties with the court orders;

(C) Any information on adult relatives, including their contact information and the volunteer's recommendation about relative placement and visitation; and

(D) The recommendations to the court.

(4)(A) At the permanency planning hearing, the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record.

(c)(1) The court shall determine on the record whether a report or an addendum report shall be admitted into evidence based on any evidentiary objections made by the parties.

(2) The court shall not consider as evidence any report, part of a report, or an addendum report that was not admitted into evidence on the record.

History. Acts 2005, No. 1191, § 5; 2007, No. 587, § 29; 2009, No. 1311, §§ 2-4; 2015, No. 1017, §§ 11, 12; 2016 (3rd Ex. Sess.), No. 2, § 5; 2016 (3rd Ex. Sess.), No. 3, § 5; 2017, No. 1111, §§ 5, 6; 2019, No. 332, § 1; 2019, No. 627, § 1.

A.C.R.C. Notes. Identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, § 1, provided:

“(a) The General Assembly finds:

“(1) State government provides vital functions that impact the lives of Arkansas citizens on a daily basis;

“(2) While these functions are important, it is equally important to ensure that state government operates efficiently and effectively to eliminate unnecessary spending of tax dollars and provide timely and quality services to Arkansas citizens; and

“(3) Issues such as the administrative organization of a governmental entity, the appointment structure of a governmental entity’s governing board, and extraneous duties assigned to governmental entities hamper the operation of state government and result in unnecessary expenses and delays in the provision of state services.

“(b) It is the intent of this act to amend provisions of law applicable to certain agencies, task forces, committees, and commission to promote efficiency and effectiveness in the operations of state government as a whole.”

Amendments. The 2015 amendment inserted designation (a)(1)(A); added (a)(1)(B); and added (a)(2)(D).

The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 2 and 3 repealed (a)(2)(D).

The 2017 amendment, in (a)(1)(A), substituted “Distribute a review report” for “File with the juvenile division of circuit

court a review report including a certificate of service that the report has been distributed”; substituted “a shared” for “the court” in (a)(1)(B); redesignated former (b)(1) as the introductory language of (b)(1) and (b)(1)(A); in the introductory language of (b)(1), deleted “file with the court” at the end; in (b)(1)(A), added “Distribute” and deleted “that includes a certificate of service that establishes that the report has been distributed” following “report”; added (b)(1)(B); and made stylistic changes.

The 2019 amendment by No. 332 deleted former (c)(1) and redesignated former (c)(2)(A) as (c)(1); substituted “a report or an addendum report” for “the reports or addendum reports” in (c)(1); redesignated former (c)(2)(B) as (c)(2); and made stylistic changes.

The 2019 amendment by No. 627 substituted “or” for “and” at the end of (b)(1)(A).

9-27-362. Emancipation of juveniles.

(a) A petition for emancipation may be filed in a circuit court by any party to a dependency-neglect, dependency, family in need of services, or delinquency case.

(b) The petition shall be served along with a notice of hearing to the juvenile’s parent, legal guardian, or legal custodian.

(c) The circuit court may emancipate a juvenile in a dependency-neglect, dependency, family in need of services, or delinquency case.

(d)(1) The court may emancipate the juvenile after a hearing on the petition if the petitioner shows by a preponderance of the evidence that:

(A) The juvenile is at least seventeen (17) years of age;

(B) The juvenile is willing to live separate and apart from his or her parent, legal guardian, or legal custodian;

(C) The juvenile has an appropriate place to live;

(D) The juvenile has been managing or has the ability to manage his or her own financial affairs;

(E) The juvenile has a legal source of income, such as employment or a trust fund;

(F) The juvenile has healthcare coverage or a realistic plan on how to meet his or her health needs;

(G) The juvenile agrees to comply with the compulsory school attendance laws; and

(H) Emancipation is in the best interest of the juvenile.

(2) The court shall consider the wishes of the parent, legal guardian, or legal custodian in making its decision.

(3) If the juvenile has an attorney ad litem, the court shall consider the recommendation of the attorney ad litem.

(e) An order of emancipation has the following effects:

- (1) The juvenile has the right to obtain and consent to all medical care, including counseling;
- (2) The juvenile has the right to enter into contracts;
- (3) The juvenile has the right to enroll himself or herself in school, college, or other educational programs;
- (4) The juvenile has the right to obtain a driver's license without consent of a parent or other adult so long as the juvenile complies with the remaining requirements of the driver's license law;
- (5) The juvenile's parent, legal guardian, or legal custodian is no longer legally responsible for the juvenile;
- (6) The juvenile may still be charged with a delinquency and prosecuted in juvenile court;
- (7) The juvenile may not marry without parental permission pursuant to § 9-11-102;
- (8) The juvenile is not relieved from compulsory school attendance;
- (9) The Department of Human Services is not relieved from the responsibility of providing independent living services and funding for which the juvenile is eligible upon request by the juvenile;
- (10) Child support orders are not terminated but may cease upon entry of an order from the court that issued the order of child support;
- (11) Until the juvenile reaches the age of majority, the juvenile remains eligible for federal programs and services as a juvenile;
- (12) The juvenile is not permitted to obtain items prohibited for sale to or possession by a minor, such as tobacco or alcohol;
- (13) The juvenile remains subject to state and federal laws enacted for the protection of persons under eighteen (18) years of age such as the prohibition against a juvenile's obtaining a tattoo; and
- (14) No statute of limitations is affected.

History. Acts 2005, No. 1990, § 19;
2009, No. 956, § 24.

9-27-363. Foster youth transition.

- (a) The General Assembly finds that:
 - (1) A juvenile in foster care should have a family for a lifetime, but too many juveniles in foster care reach the age of majority without being successfully reunited with their biological families and without the security of permanent homes;
 - (2) A juvenile in foster care who is approaching the age of majority shall be provided the opportunity to be actively engaged in the planning of his or her future; and
 - (3) The Department of Human Services shall:
 - (A) Include the juvenile in the process of developing a plan to transition the child into adulthood;
 - (B) Empower the juvenile with information about all of the options and services available;
 - (C) Provide the juvenile with the opportunity to participate in services tailored to his or her individual needs and designed to

enhance his or her ability to receive the skills necessary to enter adulthood;

(D) Assist the juvenile in developing and maintaining healthy relationships with nurturing adults who can be a resource and positive guiding influences in his or her life after he or she leaves foster care; and

(E) Provide the juvenile with basic information and documentation regarding his or her biological family and personal history.

(b)(1) The department shall assist a juvenile in foster care or entering foster care with the development of a transitional life plan when the juvenile turns fourteen (14) years of age or within ninety (90) days of his or her fourteenth birthday, whichever occurs first.

(2) The plan shall include without limitation written information and confirmation concerning:

(A) The juvenile's right to stay in foster care after reaching eighteen (18) years of age for education, treatment, or work and specific programs and services, including without limitation the John H. Chafee Foster Care Program for Successful Transition to Adulthood and other transitional services; and

(B) The juvenile's case, including his or her biological family, foster care placement history, tribal information, if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to a sibling would jeopardize the safety or welfare of the sibling.

(c) The department shall assist the juvenile with:

(1) Completing applications for:

(A) ARKids First, Medicaid, or assistance in obtaining other health insurance;

(B) Referrals to transitional housing, if available, or assistance in securing other housing; and

(C) Assistance in obtaining employment or other financial support;

(2) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and

(3) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as resources that are based on the best interest of the juvenile.

(d) A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally.

(e)(1) If a juvenile does not have the capacity to successfully transition into adulthood without the assistance of the Office of Public Guardian for Adults, the Division of Children and Family Services shall make a referral to the office no later than six (6) months before the juvenile reaches eighteen (18) years of age or upon entering foster care, whichever occurs later.

(2) A representative from the office or a designee shall attend and participate in the transitional youth staffing, and information shall be

provided to all of the parties about what services are available and how to access services for the juvenile after reaching the age of majority.

(f) Before closing a case, the department shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

- (1) Social Security card;
- (2) Certified birth certificate or verification of birth record, if available or if it should have been available to the department;
- (3) Family photos in the possession of the department;
- (4)(A) All of the juvenile's health records for the time the juvenile was in foster care and other medical records that were available or should have been available to the department.

(B) A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private;

(5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department; and

(6) Driver's license or a state-issued official identification card.

(g) Within thirty (30) days after the juvenile leaves foster care, the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available.

(h) The department shall not request a circuit court to close a family-in-need-of-services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section.

(i) The department shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held.

(j) A circuit court shall continue jurisdiction over a juvenile who has reached eighteen (18) years of age to ensure compliance with § 9-28-114.

(k) This section does not limit the discretion of a circuit court to continue jurisdiction for other reasons as provided for by law.

History. Acts 2009, No. 391, § 1; 2011, No. 591, § 8; 2013, No. 1055, § 15; 2015, No. 1033 § 1; 2015, No. 1038, § 3; 2017, No. 251, § 2; 2019, No. 663, § 1.

Amendments. The 2015 amendment by No. 1033 redesignated former (b) as (b)(1) and (2); in present (b)(1), substituted "assist a juvenile ... whichever occurs first" for "develop a transitional plan with every juvenile in foster care not later than the juvenile's seventeenth birthday or within ninety (90) days of entering a foster care program for juveniles who enter foster care at seventeen (17) years of

age or older"; redesignated former (b)(1) and (2) as (b)(2)(A) and (B); substituted "that are based on the best interest of the juvenile" for "to the juvenile based on his or her best interest" in (c)(3); inserted (e) and redesignated the remaining subsections accordingly; and deleted former (k).

The 2015 amendment by No. 1038 added (e)(6) (now (f)(6)).

The 2017 amendment substituted "referral to the office" for "referral to the unit" in (e)(1).

The 2019 amendment substituted "John H. Chafee Foster Care Program for Suc-

cessful Transition to Adulthood” for “John H. Chafee Foster Care Independence Program” in (b)(2)(A).

9-27-364. Division of Youth Services aftercare.

(a)(1) After an adjudication of delinquency and upon commitment to the Division of Youth Services, the court may order compliance with a division aftercare plan upon a juvenile’s release from the division, if recommended as part of the treatment plan submitted to the court.

(2) The division or its designee shall provide the terms and conditions of the aftercare plan in writing to the juvenile before the juvenile’s release from the division.

(3) The division or its designee shall provide the aftercare terms and conditions to the juvenile’s attorney and the juvenile’s legal parent, guardian, or custodian by the division or its designee, the prosecutor, and the committing court before the juvenile’s release from the division.

(4) The division or its designee shall explain the terms of the aftercare plan to the juvenile and his or her legal parent, guardian, or custodian before the juvenile’s release from the division.

(b)(1) Any violation of an aftercare term may be reported to the prosecuting attorney, who may initiate a petition in the committing court for violation of the aftercare plan.

(2) The Department of Human Services may also initiate a petition for a violation with the committing court.

(c) The petition shall contain specific factual allegations constituting each violation of the aftercare plan and shall be served upon the juvenile, his or her attorney, his or her parent, guardian, or custodian, and the prosecuting attorney if filed by the department.

(d) A hearing shall be set within a reasonable time after the filing of the petition or within fourteen (14) days if the juvenile has been detained as a result of the filing of the petition for the aftercare violation.

(e) If the court finds by a preponderance of the evidence that the juvenile violated the terms of the aftercare plan, the court may:

(1) Extend the terms of the aftercare plan, if requested by the division;

(2) Impose additional conditions to the aftercare plan, if requested by the division; or

(3) Make any disposition that could have been made at the time commitment was ordered under § 9-27-330.

History. Acts 2009, No. 956, § 25.

9-27-365. No reunification hearing.

(a)(1)(A) Any party can file a motion for no reunification services at any time.

(B) The motion shall be provided to all parties in writing at least twenty (20) days before a scheduled hearing.

(C) The court may conduct a hearing immediately following or concurrent with an adjudication determination or at a separate hearing if proper notice has been provided.

(2) The motion shall identify sufficient facts and grounds in sufficient detail to put the defendant on notice as to the basis of the motion for no reunification services.

(3)(A) A response is not required.

(B) If a party responds, the time for response shall not be later than ten (10) days after receipt of the motion.

(b)(1) The court shall conduct and complete a no reunification hearing within fifty (50) days of the date of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided.

(2) Upon good cause shown, the hearing may be continued for an additional twenty (20) days.

(c) An order terminating reunification services on a party and ending the duty of the Department of Human Services to provide services to a party shall be based on a finding of clear and convincing evidence that:

(1) The termination of reunification services is in the child's best interest; and

(2) One (1) or more of the following grounds exist:

(A) A circuit court has determined that the parent, guardian, custodian, or noncustodial parent has subjected the child to aggravated circumstances that include:

- (i) A child's being abandoned;
- (ii) A child's being chronically abused;
- (iii) A child's being sexually exploited;
- (iv) A child's being subjected to extreme or repeated cruelty or sexual abuse;

(v) A determination by a circuit judge that there is little likelihood that services to the family will result in successful reunification;

(vi) A child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person three (3) or more times in the past fifteen (15) months; or

(vii) A child's or a sibling's being neglected or abused such that the abuse or neglect could endanger the life of the child; or

(B) A circuit court has determined that the parent has:

- (i) Committed murder of a child;
- (ii) Committed manslaughter of a child;
- (iii) Aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter;
- (iv) Committed a felony battery that results in serious bodily injury to any child;

(v) Had parental rights involuntarily terminated as to a sibling of the child; or

(vi) Abandoned an infant as defined in § 9-27-303(1).

(d) Upon a determination that no reunification services shall be provided, the court shall hold a permanency planning hearing within

thirty (30) days unless permanency for the juvenile has been achieved through guardianship, custody, or a petition for termination of parental rights has been filed within thirty (30) days.

(e) A written order setting forth the court's findings of fact and law shall be filed with the court, by the court, or by a party or party's attorneys as designated by the court within thirty (30) days or before the next hearing, whichever is sooner.

History. Acts 2009, No. 956, § 26; 2013, No. 1055, §§ 16, 17; 2015, No. 825, § 6; 2015, No. 1024, § 7.

Amendments. The 2015 amendment by No. 825 inserted "a guardian, or a custodian" in the introductory language of (c)(2)(A).

The 2015 amendment by No. 1024 inserted "guardian, custodian, or noncustodial parent" in the introductory language of (c)(2)(A); and inserted (c)(2)(A)(iii) and redesignated the remaining subdivisions accordingly.

CASE NOTES

ANALYSIS

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Evidence.

Circuit court's finding of aggravating circumstances supporting termination of reunification services was not clearly erroneous where the mother had tested positive for amphetamines on numerous occasions and offered no evidence to justify the results, she knew how to clean, so the failure to provide homemaker services was not error, she admitted that she had continued seeing a boyfriend who had physically and emotionally abused her, and she had attempted to get prescription drugs by means other than from her medical providers. *Rickman v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 610, 534 S.W.3d 180 (2017).

Final Judgment Rule.

As the parents only challenged an order of no-reunification announced at an adjudication hearing and alluded to in an adjudication order, as a no-reunification order was not entered and the adjudication order did not dispose of the issue, there was no final, appealable order terminating reunification services under subsection (a) of this section; accordingly, the appellate court lacked jurisdiction to

hear the parents' appeal. *Calahan v. Ark. Dep't of Human Servs.*, 2011 Ark. App. 165 (2011).

Findings.

Order terminating reunification services as to a mother's two children was proper because the trial court substantially complied with subdivision (c)(2)(A)(v) (now (c)(2)(A)(vi)) of this section by making specific findings that the children had been removed from the mother's custody on three occasions and that the children had been successfully placed with their father and were without need of further services. *Coleman v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 851, 379 S.W.3d 778 (2010).

There was sufficient evidence to terminate reunification services to the father on the basis that there was little likelihood that further services would result in successful reunification under this section because the record showed that the children had been out of the father's care and custody for more than four years, he could have attempted to regain custody of the children from his parents before they were removed from their care but he did not, and he was aware that his parents were not following the case plan but did not attempt to obtain custody. *McHenry v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 443, 439 S.W.3d 724 (2014).

Notice.

Trial court erred in sua sponte ordering that the Department of Human Services not pursue reunification of a child and her

mother because notice that reunification will not be considered is required by statute. *Hardy v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 751, 351 S.W.3d 182 (2009) (decision under prior law).

Trial court committed reversible error because it failed to provide the mother written notice as required by this section before granting the father permanent custody and closing the case without reunification services. *Meyers v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 614, 533 S.W.3d 654 (2017).

Relief from Providing Services.

Department of Human Services was relieved from providing reunification services based on the unappealed finding of aggravated circumstances, specifically that there was little likelihood that services to the family would result in successful reunification. *Willingham v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 568 (2014).

Termination of the mother's parental rights was proper because she had consistently failed to keep her child out of foster care by returning to drugs each time custody of the child had been returned to her; at the time of the termination hearing,

she had been sober approximately three months; the mother had been given numerous chances to benefit from services and keep her daughter with her, but she had returned to drugs each time; and the child needed permanency, and the current foster parents wanted to adopt the child; thus, the trial court did not clearly err in terminating the mother's parental rights and, for the same reasons, in terminating reunification services. *Ladd v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 419, 526 S.W.3d 883 (2017).

Reunification.

Trial court was not clearly erroneous in adjudicating a child dependent-neglected and ordering that no reunification services be provided to the father or the mother because the parents previously had their parental rights to the child's sibling terminated. The mother was then incarcerated and the father was homeless, a longtime drug abuser, and a repeat felony offender. *Williams v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 171, 458 S.W.3d 271 (2015).

Cited: *Minor Children v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 588, 589 S.W.3d 495 (2019).

9-27-366. Confessions.

In determining whether a juvenile's confession was voluntarily, knowingly, and intelligently made, the court shall consider all circumstances surrounding the confession, including without limitation the following:

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the confession;
- (3) In cases in which the custodial parent, guardian, or custodian agreed to the interrogation that led to the confession, whether the custodial parent, guardian, or custodian understood the consequences of the confession or has an interest in the matter that is adverse to the juvenile;
- (4) Whether the juvenile and his or her custodial parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the confession was the result of any coercion, force, or inducement;
- (6) Whether the juvenile and his or her custodial parent, guardian, or custodian had waived the right to counsel or been provided counsel; and
- (7) Whether any of the following occurred:

(A) The oral, written, or sign language confession was electronically recorded in its entirety;

(B) The entire interrogation was electronically recorded;

(C) The audio or video recordings of the interrogation, if available, were used; and

(D) All of the voices on the recording are identified and the names of all persons present during the interrogation are identified.

History. Acts 2009, No. 759, § 1.

9-27-367. Court costs, fees, and fines.

(a) The juvenile division of the circuit court may order the following court costs, fees, and fines to be paid by adjudicated defendants to the circuit court juvenile division fund as provided for in § 16-13-326:

(1) The court may assess an adjudicated delinquent court costs not to exceed thirty-five dollars (\$35.00) as provided under § 9-27-330(a)(6);

(2) The court may assess an adjudicated family in need of services court costs not to exceed thirty-five dollars (\$35.00) as provided under § 9-27-332(a)(8);

(3) The court may order a probation fee for juveniles adjudicated delinquent not to exceed twenty dollars (\$20.00) per month as provided under § 9-27-330(a)(5);

(4) The court may order a juvenile service fee for an adjudicated family in need of services not to exceed twenty dollars (\$20.00) per month as provided under § 9-27-332(a)(9);

(5) The court may order a fine for adjudicated delinquents of not more than five hundred dollars (\$500) as provided under § 9-27-330(a)(8);

(6) The court may order a fine for an adjudicated family in need of services of not more than five hundred dollars (\$500) as provided under § 9-27-332(a)(7); and

(7) A juvenile intake or probation officer may charge a diversion fee limited to no more than twenty dollars (\$20.00) per month as provided under § 9-27-323.

(b) The court shall direct that the juvenile division court costs and fees be collected, maintained, and accounted for in the same manner as juvenile probation and juvenile services fees as provided for in § 16-13-326.

History. Acts 2011, No. 1175, § 11.

9-27-368. Risk and needs assessments.

(a) The Administrative Office of the Courts shall work with the circuit courts to implement a validated risk and needs assessment that shall be provided to the juvenile divisions of the circuit courts to be used at delinquency disposition hearings and to aid in juvenile treatment plans.

(b) A juvenile division circuit court judge shall have the discretion to designate either a trained juvenile intake or probation officer to conduct the validated risk and needs assessment in the court of the circuit court judge.

(c)(1) The juvenile intake or probation officer conducting the risk and needs assessment shall interview the juvenile and the juvenile's parent, guardian, or custodian.

(2) Information gathered by the juvenile intake or probation officer during the intake process implemented to complete the risk and needs assessment shall be confidential and shall not be used against the juvenile in the delinquency proceeding.

(3) The juvenile intake or probation officer conducting the risk and needs assessment shall not discuss any offense for which the juvenile is currently charged during the intake assessment.

(d) A risk and needs assessment prepared for a delinquency disposition hearing shall be provided to the necessary parties seven (7) days in advance and presented to the court at the disposition hearing.

(e)(1) The court may order an updated risk and needs assessment that should be updated when there are significant changes in the juvenile's treatment plan.

(2) Any revisions or updates to the risk and needs assessment shall be provided to the necessary parties seven (7) days in advance of a court hearing in the delinquency proceeding.

(f) Juvenile risk and needs assessments may be provided to the Division of Youth Services personnel, service providers, and other necessary persons designated by the court to provide appropriate treatment and case plan services.

History. Acts 2015, No. 1023, § 1.

9-27-369. Resumption of services.

(a) The Department of Human Services or an attorney ad litem may file a motion to resume services for a parent whose parental rights were previously terminated under this subchapter if:

(1) The child:

(A) Is currently in the custody of the department;

(B) Is not in an adoptive placement, a pre-adoptive placement, or under another permanent placement and there is some evidence that the juvenile is not likely to achieve permanency within a reasonable period of time as viewed from the child's perspective; or

(C) Was previously adopted, appointed a permanent guardian, or placed in the permanent custody of another individual and the adoption, guardianship, or custodial placement was disrupted or otherwise dissolved; and

(2)(A) The order terminating the parental rights of the parent who is the subject of a motion filed under this section was entered at least three (3) years before the date on which the motion to resume services was filed.

(B) The three-year waiting period may be waived if it is in the best interest of the child.

(b)(1) A motion filed under this section shall identify the parent for whom services would resume.

(2) A parent shall not be named as a party to a motion filed under this section.

(3) The petitioner shall serve the parent who is the subject of a motion filed under this section with the motion.

(4) A parent who is the subject of a motion filed under this section shall have the right to be heard at a hearing on the motion.

(c) When determining whether to grant or deny a motion filed under this section, the court shall consider the:

(1) Efforts made by the department to achieve adoption or other permanent placement for the child, including without limitation any barriers preventing permanency from being achieved;

(2) Current status of the parent who is the subject of the motion, including without limitation the extent to which the parent has remedied any conditions that led to the termination of his or her parental rights;

(3) Willingness of the parent who is the subject of the motion to participate with the services offered; and

(4) Child's wishes regarding a resumption of contact, visitation, or placement with the parent who is the subject of the motion.

(d)(1) A court may grant a motion filed under this section if it finds by a preponderance of the evidence that it is in the best interest of the child to resume services and establish appropriate contact or visitation between the child and the parent or placement of the child with the parent.

(2) If the court grants a motion filed under this section, the court:

(A)(i) May order family services for the purposes of assisting reunification between the child and a fit parent who is the subject of the motion.

(ii) The court may order the parent to pay for some or all of the costs associated with court-ordered family services;

(B)(i) May order studies, evaluations, home studies, or post-disposition reports.

(ii) A written home study on the parent who is the subject of the motion shall be submitted to the court before the court may order unsupervised visitation or placement of the juvenile with the parent.

(iii) If a study, evaluation, or home study is performed before a hearing on a motion filed under subsection (a) of this section, the results of the study, evaluation, or home study shall be served on the parent, attorney ad litem, court-appointed special advocate, and any other party to the motion at least two (2) business days before the hearing; and

(C) Shall schedule a review hearing every ninety (90) days until the court:

(i) Finds that it is not in the best interest of the child to have contact, visitation, or placement with the parent;

(ii) Enters an order reinstating the rights of the parent under § 9-27-370; or

(iii) No longer has jurisdiction over the case.

(3) A staffing shall be held and a case plan developed within thirty (30) days of the date on which the order granting a motion for resumption of services under this section is entered.

(e) A court may deny a motion filed under this section if the court finds by a preponderance of the evidence that the parent who is the subject of the motion engaged in conduct that interfered with the child's ability to achieve permanency.

(f) The written order of the court shall be filed by the court, a party, or the attorney of a party as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing on the motion to resume services or before the next hearing, whichever is sooner.

History. Acts 2017, No. 994, § 3; 2019, No. 317, § 1.

A.C.R.C. Notes. Acts 2017, No. 994, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) A juvenile in the foster care system should have a family for a lifetime;

"(2) Too many juveniles in the foster care system reach the age of majority without being reunited successfully with their biological families and without the security of a permanent home; and

"(3) The Division of Children and Family Services' annual report for 2016 indicated that:

"(A) Nine hundred seventy-four (974) juveniles between twelve (12) and fourteen (14) years of age were in the foster care system;

"(B) One thousand four hundred twenty-nine (1,429) juveniles over fourteen (14) years of age were in the foster care system; and

"(C) Eight hundred eleven (811) juveniles were in the foster care system for over thirty-six (36) months."

Acts 2017, No. 994, § 2, provided: "Legislative intent. Through the passage of this act, the General Assembly intends to:

"(1) Provide additional options to the child welfare system; and

"(2) Find permanency for juveniles in the foster care system, particularly for those juveniles who are over fourteen (14) years of age or older and have been in the foster care system for an extended period of time without finding a permanent family."

Amendments. The 2019 amendment substituted "Is currently in the custody of the department" for "Does not have a legal department" in (a)(1)(A); and redesignated former (a)(2) as (a)(2)(A) and added (a)(2)(B).

9-27-370. Reinstatement of parental rights.

(a) The Department of Human Services or an attorney ad litem may file a petition to reinstate the parental rights of a parent whose parental rights have been terminated under this subchapter if the:

(1) Court has granted a motion to resume services under § 9-27-369;

(2) Services have continued for at least one hundred eighty (180) days following the date on which the court entered the order granting a motion to resume services under § 9-27-369; and

(3) Parent for whom reinstatement of parental rights is sought has substantially complied with the orders of the court and with the case plan developed under § 9-27-369.

(b) A petition to reinstate parental rights shall be filed in the circuit court that had jurisdiction over the petition to terminate the parental rights of the parent who is the subject of the petition to reinstate parental rights.

(c) A petition filed under this section shall be served on the:

- (1) Attorney ad litem;
- (2) Department;
- (3) Parent who is the subject of the petition;
- (4) Court Appointed Special Advocate Program Director, if applicable; and
- (5) Child's tribe, if applicable.

(d) At least seven (7) business days before a hearing on a petition filed under this section, the department shall provide the parent, parent's counsel, attorney ad litem, court-appointed special advocate, and any other party to the petition with a written report that includes information on:

- (1) The efforts made by the department to achieve adoption or another permanent placement for the child, including without limitation any barriers to the adoption or permanent placement of the child;
- (2) The extent to which the parent who is the subject of the petition has complied with the case plan and orders of the court as of the date on which services were ordered to be resumed under § 9-27-369;
- (3) The impact of the resumed services on the parent and on the health, safety, and well-being of the child; and
- (4) Any recommendations of the department.

(e) Parental rights may be reinstated under this section if the court finds by clear and convincing evidence that:

- (1) Reinstatement of parental rights is in the best interest of the child; and
- (2) There has been a material change in circumstances as to the parent who is the subject of the petition since the date on which the order terminating the parental rights of the parent was entered.

(f) The court shall consider the following factors when determining whether a reinstatement of parental rights is in the best interest of the child:

- (1) The likelihood of the child achieving permanency through adoption or another permanent placement;
- (2) The age, maturity, and preference of the child concerning the reinstatement of parental rights;
- (3) The parent's fitness and whether the parent has remedied the conditions that existed at the time of the termination of his or her parental rights; and
- (4) The effect that the reinstatement of parental rights would have on the health, safety, and well-being of the child.

(g) A court may deny a petition filed under this section if the court finds by a preponderance of the evidence that the parent engaged in conduct that interfered with the child's ability to achieve permanency.

(h) An order reinstating the parental rights of the parent who is the subject of a petition filed under this section restores all rights, powers,

privileges, immunities, duties, and obligations of the parent as to the child, including without limitation custody, control, and support of the child.

(i) If the child is placed with a parent whose parental rights are reinstated under this section, the court shall not close the case until the child has resided with the parent for no less than six (6) months.

(j) A written order shall be filed by the court, a party, or the attorney of a party as designated by the court within thirty (30) days of the date of the hearing on the motion to reinstate parental rights or before the next hearing, whichever is sooner.

(k) An order reinstating parental rights under this section does not:

(1) Vacate or affect the validity of a previous order terminating the parental rights of the parent who is the subject of the petition; and

(2) Restore or impact the rights of a parent who is not the subject of a petition filed under this section.

(l) This section is retroactive and applies to a child who is under the jurisdiction of a court at the time of a hearing on a petition to terminate parental rights, regardless of the date on which parental rights were terminated by court order.

History. Acts 2017, No. 994, § 3.

A.C.R.C. Notes. Acts 2017, No. 994, § 1, provided: “Legislative findings. The General Assembly finds that:

“(1) A juvenile in the foster care system should have a family for a lifetime;

“(2) Too many juveniles in the foster care system reach the age of majority without being reunited successfully with their biological families and without the security of a permanent home; and

“(3) The Division of Children and Family Services’ annual report for 2016 indicated that:

“(A) Nine hundred seventy-four (974) juveniles between twelve (12) and fourteen (14) years of age were in the foster care system;

“(B) One thousand four hundred twenty-nine (1,429) juveniles over four-

teen (14) years of age were in the foster care system; and

“(C) Eight hundred eleven (811) juveniles were in the foster care system for over thirty-six (36) months.”

Acts 2017, No. 994, § 2, provided: “Legislative intent. Through the passage of this act, the General Assembly intends to:

“(1) Provide additional options to the child welfare system; and

“(2) Find permanency for juveniles in the foster care system, particularly for those juveniles who are over fourteen (14) years of age or older and have been in the foster care system for an extended period of time without finding a permanent family.”

CASE NOTES

Cited: *Minor Children v. Ark. Dep’t of Human Servs.*, 2019 Ark. App. 588, 589 S.W.3d 495 (2019).

9-27-371. Punitive isolation or solitary confinement of juveniles — Definitions.

(a) As used in this section:

(1) “Punitive isolation” means the placement of a juvenile in a location that is separate from the general population as a punishment; and

(2) “Solitary confinement” means the isolation of a juvenile in a cell separate from the general population as a punishment.

(b) A juvenile who has been placed or detained in a juvenile detention facility shall not be placed in punitive isolation or solitary confinement as a disciplinary measure for more than twenty-four (24) hours unless the:

(1) Placement of the juvenile in punitive isolation or solitary confinement is due to:

(A) A physical or sexual assault committed by the juvenile while in the juvenile detention facility;

(B) Conduct of the juvenile that poses an imminent threat of harm to the safety or well-being of the juvenile, the staff, or other juveniles in the juvenile detention facility; or

(C) The juvenile’s escaping or attempting to escape from the juvenile detention facility; and

(2)(A) Director of the juvenile detention facility provides written authorization to place the juvenile in punitive isolation or solitary confinement for more than twenty-four (24) hours.

(B) The director of the juvenile detention facility shall provide the written authorization described in subdivision (b)(2)(A) of this section for every twenty-four-hour period during which the juvenile remains in punitive isolation or solitary confinement after the initial twenty-four (24) hours.

History. Acts 2019, No. 971, § 1.

SUBCHAPTER 4 — DIVISION OF DEPENDENCY-NEGLECT REPRESENTATION

SECTION.

9-27-401. Creation — Representation for children and parents.

SECTION.

9-27-402. Case plans.

Effective Dates. Acts 1997, No. 1227, § 19: Apr. 7, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an important public interest in providing quality representation to juveniles and parents in dependency-neglect proceedings, pursuant to Ark. Code Ann. 9-27-316. It is further determined that children are the state’s most treasured future resource and recent studies indicate that children and their parents have not always received quality representation and sometimes have gone without representation in dependency-ne-

glect proceedings in the past because the counties of Arkansas have been unable to provide adequate representation due to lack of funding and uniform application of the law. To insure the best interests of Arkansas’ children in achieving a safe and permanent home, to comply with federal law mandating appointment of guardians ad litem in dependency-neglect cases, and to prevent the loss of federal funding, a statewide system for quality dependency-neglect representation must be established. Therefore an emergency is declared to exist and this act being immediately necessary for the preserva-

tion of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 401, § 20: Mar. 4, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that in November, 1997, the United States Congress passed Public Law 105-89, the Adoption and Safe Families Act. The primary emphasis of the act is ensuring that the health and safety of children is the paramount concern by the child welfare agency and the court in making decisions about the life of a child. The requirements in this state law are a requirement for continued federal funding of child welfare services in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 708, § 7: July 1, 1999. Emergency clause provided: "It is hereby

found and determined by the Eighty-second General Assembly that the effectiveness of this act on July 1, 1999 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Tort liability of public authority for failure to remove parentally abused or neglected children from parent. 60 A.L.R.4th 942.

9-27-401. Creation — Representation for children and parents.

(a) There is hereby created the Division of Dependency-Neglect Representation within the Administrative Office of the Courts that will be staffed by a court-appointed special advocate coordinator and an attorney coordinator.

(b)(1) The Director of the Administrative Office of the Courts is authorized to employ or enter into professional service contracts with

private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.

(2)(A) Before employing or entering into a contract or contracts, the office shall consult with the judge or judges of the circuit court designated to hear dependency-neglect cases in their district plan under Supreme Court Administrative Order No. 14, originally issued April 6, 2001, in each judicial district in accordance with the provisions of § 19-11-1001 et seq.

(B) Those obtaining employment or contracts through the office as described in subdivision (b)(3) of this section will be designated as the providers for representation of children in dependency-neglect cases in each judicial district.

(3)(A) The office shall advertise employment and contract opportunities.

(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Judges Committee of the Arkansas Judicial Council.

(4) The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases.

(5)(A)(i) In the transition to a state-funded system of dependency-neglect representation, it is the intent of the General Assembly to provide an appropriate and adequate level of representation to all children in dependency-neglect proceedings as required under federal and state law pursuant to § 9-27-316.

(ii)(a) It is recognized by the General Assembly that in many areas of the state, resources have not been available to support the requirement of representation for children at the necessary level.

(b) It is also recognized, however, that in other areas a system has been developed that is appropriately and successfully serving children and the courts.

(iii) With the transition to state funding, it is not the intent of the General Assembly to adversely affect these systems that are working well or to put into place a system that is too inflexible to respond to local needs or restrictions.

(B) In its administration of the system, therefore, the office is charged with the authority and responsibility to establish and maintain a system that:

(i) Equitably serves all areas of the state;

(ii) Provides quality representation;

(iii) Makes prudent use of state resources; and

(iv) Works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases.

(c) The director is authorized to:

(1) Establish a statewide court-appointed special advocate program;

(2) Provide grants or contracts to local court-appointed special advocate programs; and

(3) Work with judicial districts to establish local programs by which circuit courts may appoint trained volunteers to provide valuable information to the courts concerning the best interests of children in dependency-neglect proceedings.

History. Acts 1997, No. 1227, § 14; 1999, No. 708, § 1; 2001, No. 987, § 6; 2001, No. 1267, § 1; 2003, No. 1166, § 28; 2003, No. 1315, § 1; 2007, No. 587, § 30; 2011, No. 1175, § 12; 2017, No. 861, § 5.

Amendments. The 2017 amendment repealed (d).

Cross References. Commission for Parent Counsel, § 9-27-701 et seq.

9-27-402. Case plans.

(a)(1) A case plan shall be developed in all dependency-neglect cases or any case involving an out-of-home placement.

(2) The case plan developed by the Department of Human Services under § 9-28-111 shall be filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner.

(3) If the department does not have sufficient information before the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available.

(4) All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing.

(b) The case plan is subject to court approval upon review by the court.

(c) The participation of a parent, guardian, or custodian in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect.

History. Acts 1997, No. 1227, § 8; 1999, No. 401, § 16; 2009, No. 956, § 27; 2011, No. 591, § 9.

CASE NOTES

Record on Appeal.

In a termination of parental rights appeal, under Ark. Sup. Ct. & Ct. App. R. 3-1 and 3-2, the “entire record” could be properly prepared and transmitted by the circuit clerk without including the case plan, even though the plan had in fact been filed in accordance with this section; it was the mother’s burden to bring up an adequate record for review and, because the record

omitted the case plan, the court could not review the mother’s due process claim. *Rodriguez v. Ark. Dep’t of Human Servs.*, 360 Ark. 180, 200 S.W.3d 431 (2004).

Cited: *Jones v. Ark. Dep’t of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005); *Ramsey v. Ark. Dep’t of Human Servs.*, 2009 Ark. App. 1365, 377 S.W.3d 399 (2010).

SUBCHAPTER 5 — EXTENDED JUVENILE JURISDICTION

SECTION.

9-27-501. Extended juvenile jurisdiction designation.

SECTION.

9-27-502. Competency — Fitness to proceed — Lack of capacity.

SECTION.

9-27-503. Designation hearing.

9-27-504. Right to counsel.

9-27-505. Extended juvenile jurisdiction adjudication.

9-27-506. Extended juvenile jurisdiction disposition hearing.

9-27-507. Extended juvenile jurisdiction court review hearing.

SECTION.

9-27-508. Extended juvenile jurisdiction records.

9-27-509. Division of Youth Services — Commitment of extended juvenile jurisdiction juveniles.

9-27-510. Division of Correction — Placement.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

9-27-501. Extended juvenile jurisdiction designation.

(a) The state may request an extended juvenile jurisdiction designation in a delinquency petition or file a separate motion if the:

(1) Juvenile, under thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in § 9-27-502;

(2)(A) Juvenile, thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(B) However, juveniles thirteen (13) years of age at the time of the alleged offense shall have an evaluation pursuant to § 9-27-502, and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity;

(3) Juvenile, fourteen (14) or fifteen (15) years of age at the time of the alleged offense, is charged with any of the crimes listed in § 9-27-318(b)(1) and (c)(2); or

(4) Juvenile, sixteen (16) or seventeen (17) years of age at the time of the alleged offense, is charged with any of the crimes listed in § 9-27-318(b)(1) and (c)(2).

(b) The juvenile’s attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to subsection (a) of this section.

History. Acts 1999, No. 1192, § 1; 2003, No. 1809, § 13.

A.C.R.C. Notes. As enacted, subdivision (a)(3) ended “as amended by this act.”

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tanner, Arkansas’ Extended Juvenile Jurisdiction Act: The Balance of Offender Rehabilita-

tion and Accountability, 22 U. Ark. Little Rock L. Rev. 647.

CASE NOTES

ANALYSIS

In General.
Hearings.

In General.

Defendant’s argument that he should have been adjudicated pursuant to extended juvenile jurisdiction (EJJ) was without merit because there could be no EJJ designation unless the case either was already in the juvenile division or was transferred to the juvenile division. *Lindsey v. State*, 2016 Ark. App. 355, 498 S.W.3d 336 (2016).

Hearings.

Designation of the juvenile for extended juvenile jurisdiction (EJJ) was proper be-

cause his contention that the law-of-the-case doctrine barred the juvenile court from conducting an extended juvenile jurisdiction hearing and granting the state’s motion for such a designation was rejected. In the criminal case, that court reached no decision and provided no direction to the criminal court with respect to EJJ designation and upon remand the criminal court made no decision regarding EJJ designation; nothing required the criminal court to make a decision on the EJJ issues before the case was transferred to juvenile court. *N.D. v. State*, 2012 Ark. 265, 383 S.W.3d 396 (2012).

Cited: *Barton v. State*, 366 Ark. 339, 235 S.W.3d 511 (2006).

9-27-502. Competency — Fitness to proceed — Lack of capacity.

(a) Except as provided in subsection (b) of this section, the provisions of § 5-2-301 et seq. shall apply to the following:

(1) In any juvenile delinquency proceeding in which the juvenile’s fitness to proceed is put in issue by any party or the court; and

(2) In juvenile delinquency proceedings in which extended juvenile jurisdiction designation has been requested by any party and a party intends to raise lack of capacity as an affirmative defense.

(b)(1)(A) For a juvenile under thirteen (13) years of age at the time of the alleged offense and who is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, there shall be a presumption that:

(i) The juvenile is unfit to proceed; and

(ii) He or she lacked capacity to:

(a) Possess the necessary mental state required for the offense charged;

(b) Conform his or her conduct to the requirements of law; and

(c) Appreciate the criminality of his or her conduct.

(B) The prosecution must overcome these presumptions by a preponderance of the evidence.

(2)(A) For a juvenile under thirteen (13) years of age and who is charged with capital murder, § 5-10-101, or murder in the first

degree, § 5-10-102, the court shall order an evaluation to be performed in accordance with § 5-2-327 or § 5-2-328, or both.

(B) Upon an order for evaluation, all proceedings shall be suspended and the period of delay until the juvenile is determined fit to proceed shall constitute an excluded period for the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(3) The court shall require the prosecuting attorney to provide to the examiner any information relevant to the evaluation, including, but not limited to:

(A) The names and addresses of all attorneys involved;

(B) Information about the alleged offense; and

(C) Any information about the juvenile's background that the prosecutor deems relevant.

(4) The court may require the attorney for the juvenile to provide any available information relevant to the evaluation, including, but not limited to:

(A) Psychiatric records;

(B) School records; and

(C) Medical records.

(5) All information required under subdivisions (b)(3) and (4) of this section must be provided to the examiner within ten (10) days after the court order for the evaluation and, when possible, this information shall be received prior to the juvenile's admission to the facility providing the inpatient evaluation.

(6) In assessing the juvenile's competency, the examiner shall:

(A)(i) Obtain and review all records pertaining to the juvenile.

(ii) This should include the information in subdivisions (b)(3) and (4) of this section and any other relevant records;

(B) Consider the social, developmental, and legal history of the juvenile, as related by the juvenile and a parent or guardian, and any other relevant source;

(C) Consider the current alleged offense;

(D) Conduct a competence abilities interview of the juvenile;

(E) Conduct an age-appropriate mental status exam using tests designed for juveniles;

(F) Conduct an age-appropriate psychological evaluation using tests designed for juveniles; and

(G) Consider any other relevant test or information.

(7)(A) Evaluations shall be filed with the court and distributed to the parties within ninety (90) days from the date of the order requesting the evaluation.

(B) All such reports shall be filed under seal with the court and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(C) The report shall include, but not be limited to, the following:

(i) Identification of the juvenile and the charges;

(ii) Listing of assessment methods used;

(iii) Description of what the juvenile was told about the purpose of the evaluation;

- (iv) Social, clinical, and developmental history and the sources from which this information was obtained;
- (v) Mental status data, including any psychological testing conducted and results;
- (vi) Comprehensive intelligence testing;
- (vii) Competence data assessing the competence-to-stand-trial abilities;
- (viii) Interpretation of the data, including clinical or developmental explanations for any serious deficits in competence abilities;
- (ix)(a) An opinion as to the juvenile's fitness to proceed.
 - (b) In reaching this opinion, the examiner shall consider and make written findings regarding the following:
 - (1) Do the juvenile's capabilities entail:
 - (A) An ability to understand and appreciate the charges and their seriousness;
 - (B) An ability to understand and realistically appraise the likely outcomes;
 - (C) A reliable episodic memory so that he or she can accurately and reliably relate a sequence of events;
 - (D) An ability to extend thinking into the future;
 - (E) An ability to consider the impact of his or her actions on others;
 - (F) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner; and
 - (G) Logical decision-making abilities, particularly multifactored problem solving or the ability to take several factors into consideration in making a decision; and
 - (2) Developmentally, does the juvenile have:
 - (A) An ability to understand the charges;
 - (B) An ability to understand the roles of participants in the trial process, i.e., judge, defense attorney, prosecutor, witnesses, and jury and understand the adversarial nature of the process;
 - (C) An ability to adequately trust and work collaboratively with his or her attorney and provide a reliable recounting of events;
 - (D) An ability to reason about available options by weighing their consequences, including, but not limited to, weighing pleas, waivers, and strategies;
 - (E) An ability to disclose to an attorney a reasonably coherent description of facts pertaining to the charges, as perceived by the juvenile; and
 - (F) An ability to articulate his or her motives; and
 - (x)(a) An opinion as to whether at the time the juvenile engaged in the conduct charged, as a result of immaturity or mental disease or defect, the juvenile lacked capacity to:
 - (1) Possess the necessary mental state required for the offense charged;
 - (2) Conform his or her conduct to the requirements of the law; and
 - (3) Appreciate the criminality of his or her conduct.

(b) In reaching this opinion, the examiner shall consider and make written findings with respect to the following questions regarding the juvenile's abilities and capacities:

- (1) Was the juvenile able to form the necessary intent;
- (2) Did the juvenile know which actions were wrong;
- (3) Did the juvenile have reasonably accurate expectations of the consequences of his or her actions;
- (4) Was the juvenile able to act of his or her own volition;
- (5) Did the juvenile have the capacity to behave intentionally;
- (6) Did the juvenile have the capacity to engage in logical decision-making;
- (7) Did the juvenile have the capacity to foresee the consequences of his or her actions; and
- (8) Did the juvenile have the capacity to exert control over his or her impulses and to resist peer pressure.

(8)(A) Within thirty (30) days of the receipt of the evaluation report, the court shall first determine whether the juvenile is fit to proceed.

(B)(i) The parties may stipulate to the findings and conclusions of the evaluation report and the court may enter an order with respect to fitness based thereon.

(ii)(a) Otherwise, a hearing shall be conducted and in order for the court to find a juvenile fit to proceed, the prosecution shall be required to prove by a preponderance of the evidence the following:

(1) The juvenile understands the charges and potential consequences;

(2) The juvenile understands the trial process and proceedings against him or her; and

(3) The juvenile has the capacity to effectively participate with and assist his or her attorney in a defense to prosecution.

(b) The court shall issue written findings as to whether the prosecution has met its burden with respect to such issues and whether the juvenile is fit or unfit to proceed.

(9)(A) If the juvenile is found unfit to proceed, the court shall commit the juvenile to the custody of the Department of Human Services or a residential treatment facility for a period not to exceed nine (9) months.

(B) During this period, the facility responsible for the juvenile shall be required to report to the court and the parties at least every thirty (30) days on the juvenile's progress.

(C) If fitness to proceed is not restored within nine (9) months, the court shall convert the delinquency petition to a family in need of services petition.

(10)(A) If a juvenile is found fit to proceed, the court shall next conduct a hearing wherein the state shall be required to prove by a preponderance of the evidence that at the time the juvenile engaged in the conduct charged he or she had the capacity to:

(i) Possess the necessary mental state required for the offense charged;

- (ii) Conform his or her conduct to the requirements of the law; and
- (iii) Appreciate the criminality of his or her conduct.

(B)(i) In making the determination, the court shall consider the written findings of the examiner and any other relevant evidence and shall issue a written order with respect to the hearing.

(ii) If the court finds that the state did not meet its burden with regard to the capacity of the charged offense, but the juvenile had the capacity for a lesser included offense, the court shall convert the extended juvenile jurisdiction petition to a delinquency petition.

(iii) If the court finds the state did not meet its burden with regard to the capacity of the charged offense or a lesser included offense, the court shall convert the delinquency petition into a family in need of services petition.

(iv)(a) If the court finds that the state met its burden with regard to the capacity, the court shall schedule a designation hearing as described in § 9-27-503.

(b) Such a finding by the court does not prevent the juvenile from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing.

History. Acts 1999, No. 1192, § 2; 2007, No. 568, § 4; 2017, No. 472, § 25.

Amendments. The 2017 amendment, in (b)(2)(A), substituted “For a juvenile” for “For such juveniles”, “who is” for “who

are,” and “§ 5-2-327 or § 5-2-328, or both” for “§ 5-2-305(b) by a psychiatrist or a clinical psychologist who is specifically qualified by training and experience in the evaluation of juveniles”.

9-27-503. Designation hearing.

(a)(1) When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days following the petition or motion requesting such designation.

(2) These time limitations shall be tolled during the pendency of any competency issues.

(b) The party requesting the extended juvenile jurisdiction designation has the burden to prove by a preponderance of the evidence that such a designation is warranted.

(c) The court shall make written findings and consider all of the following factors in making its determination to designate a juvenile as an extended juvenile jurisdiction offender:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an extended juvenile jurisdiction offender;

(2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;

(4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;

(5) The previous history of the juvenile, including whether the juvenile had been adjudicated delinquent and, if so, whether the offenses were against persons or property and any other previous history of antisocial behavior or patterns of physical violence;

(6) The sophistication and maturity of the juvenile, as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;

(7) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;

(8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;

(9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

(10) Any other factors deemed relevant by the court.

(d) Upon finding that the juvenile shall be treated as an extended juvenile jurisdiction offender, the court shall enter its written findings and inform the juvenile of his or her right to a jury trial and shall set a date for the adjudication.

(e) If the court denies the request for extended juvenile jurisdiction, the court shall enter its written findings and proceed with the case as a delinquency proceeding.

(f) For purposes of appeal, a designation order is a final appealable order and shall be subject to an interlocutory appeal.

History. Acts 1999, No. 1192, § 3.

CASE NOTES

ANALYSIS

In General.

Appeal.

Burden of Proof.

EJJ Designation Upheld.

In General.

Defendant's argument that he should have been adjudicated pursuant to extended juvenile jurisdiction (EJJ) was without merit because there could be no EJJ designation unless the case either was already in the juvenile division or was transferred to the juvenile division. *Lindsey v. State*, 2016 Ark. App. 355, 498 S.W.3d 336 (2016).

Appeal.

As a juvenile's objection to the failure to have an extended juvenile jurisdiction hearing within 90 days was untimely, as the juvenile waived the right to insist on a timely hearing, and as the juvenile cited

no authority as to what principle of fundamental fairness had been violated, there was no penalty for noncompliance with Ark. R. Crim. P. 28.1 under subsection (a) of this section. *D.B. v. State*, 2011 Ark. App. 151 (2011).

Appellate jurisdiction over an extended juvenile jurisdiction order was lacking where the juvenile had not filed a notice of appeal within 30 days of the order's entry of judgment nor had he designated the order being appealed. *J.N.A. v. State*, 2017 Ark. App. 502, 532 S.W.3d 582 (2017).

Burden of Proof.

Trial court did not err in denying a juvenile's request to transfer his case to the juvenile division under § 9-27-318(g) based on the seriousness of the crimes; the aggressive, willful manner of the crimes; that the offenses were against persons; and the juvenile's sophisticated evasion of capture and non-cooperation. The trial court properly used the clear and convinc-

ing burden of proof from § 9-27-318(h)(2) in deciding the juvenile's request, not the preponderance of the evidence standard applicable under subsection (b) of this section. *A.I. v. State*, 2010 Ark. App. 83 (2010).

EJJ Designation Upheld.

Although the juvenile had not been adjudicated delinquent previously, the circuit court did not err in finding that factor 5, under subdivision (c)(5) of this section, supported a juvenile's extended juvenile jurisdiction designation where the testimony of his teachers and family showed

that he exhibited antisocial behavior as early as the first or second grade and exhibited violent and disturbing behavior at home and at school, including physical and verbal abuse. *A.M. v. State*, 2019 Ark. App. 357, 584 S.W.3d 253 (2019).

While there was uncontroverted evidence of environmental and custodial instability in the juvenile's young life, that evidence did not negate the circuit court's finding that he acted in a sophisticated manner in planning and executing the murder. *A.M. v. State*, 2019 Ark. App. 357, 584 S.W.3d 253 (2019).

9-27-504. Right to counsel.

(a) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b) This right to counsel cannot be waived.

History. Acts 1999, No. 1192, § 4.

9-27-505. Extended juvenile jurisdiction adjudication.

(a) An extended juvenile jurisdiction offender and the state shall have the right to a jury trial at the adjudication hearing.

(b) The juvenile shall be advised of the right to a jury trial by the circuit court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(c)(1) The right to a jury trial may be waived by a juvenile only after being advised of his or her rights and after consultation with the juvenile's attorney.

(2) The waiver shall be in writing and signed by the juvenile, the juvenile's attorney, and the juvenile's parent or guardian, and the court shall inquire on the record to ensure that the waiver was made in a knowing, intelligent, and voluntary manner.

(d) All provisions of the Arkansas Code of 1987 Annotated and the Arkansas Rules of Criminal Procedure not in conflict with this subchapter that regulate criminal jury trials in circuit court shall apply to jury trials for juveniles subject to extended juvenile jurisdiction proceedings.

(e) The adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(f) The state bears the burden to prove the charges in the petition beyond a reasonable doubt.

(g)(1) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter a disposition subject to § 9-27-506.

(2) If the juvenile is adjudicated delinquent for an offense that would not have subjected him or her to extended juvenile jurisdiction, the court shall enter any of the dispositions available under § 9-27-330.

History. Acts 1999, No. 1192, § 5;
2003, No. 1166, § 29.

9-27-506. Extended juvenile jurisdiction disposition hearing.

If a juvenile is found delinquent as an extended juvenile jurisdiction offender, the circuit court shall enter the following dispositions:

- (1) Order any of the juvenile dispositions authorized by § 9-27-330; and
- (2) Suspend the imposition of an adult sentence pending court review.

History. Acts 1999, No. 1192, § 6;
2003, No. 1166, § 30.

9-27-507. Extended juvenile jurisdiction court review hearing.

(a) The state may petition the circuit court at any time to impose an adult sentence if the juvenile:

- (1) Has violated a juvenile disposition order;
- (2) Has been adjudicated delinquent or found guilty of committing a new offense; or
- (3) Is not amenable to rehabilitation in the juvenile system.

(b) If the court finds by a preponderance of the evidence that the juvenile has violated a juvenile disposition order, has been found delinquent or guilty of committing a new offense, or is not amenable to rehabilitation in the juvenile system, the court may:

- (1) Amend or add any juvenile disposition authorized by § 9-27-330; or

(2)(A)(i) Exercise its discretion to impose the full range of adult sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment.

(ii) However, a sentence of imprisonment shall not exceed forty (40) years except for juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, who may be sentenced for any term, up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention facility or any juvenile facility.

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(ii) If release is ordered, the court shall impose a period of probation for not less than three (3) years.

(c)(1)(A) The juvenile may petition the court to review and modify the disposition at any time.

(B) If the juvenile's initial petition is denied, the juvenile must wait one (1) year from the date of the denial to file a new petition for modification.

(2)(A) The Department of Human Services may petition the court to review and modify the disposition at any time.

(B) If the department's initial petition for review and modification is denied, the department must wait one (1) year from the date of the denial to file a new petition for review and modification unless the department has clear and convincing new evidence that the juvenile has been rehabilitated.

(d)(1) If the state or the juvenile files a petition to modify the court's disposition order before six (6) months prior to the juvenile's eighteenth birthday, the filing party bears the burden of proof.

(2) If the juvenile is sixteen (16) or seventeen (17) years of age at the time that the extended juvenile jurisdiction petition is filed, then the State of Arkansas or the juvenile may petition the court after the juvenile's eighteenth birthday but no later than six (6) months before the juvenile's twenty-first birthday.

(e)(1) If no hearing has been conducted six (6) months before the juvenile's eighteenth birthday or no later than six (6) months before the juvenile's twenty-first birthday if the juvenile is sixteen (16) or seventeen (17) years of age at the time that the extended juvenile jurisdiction petition is filed, the court shall conduct a hearing to determine whether to release the juvenile, amend or add any juvenile disposition, or impose an adult sentence.

(2) In making its determination, the court shall consider the following:

(A) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(B) The nature of the offense or offenses and the manner in which the offense or offenses were committed;

(C) The recommendations of the professionals who have worked with the juvenile;

(D) The protection of public safety;

(E) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation; and

(F) Victim impact evidence admitted pursuant to § 16-97-103.

(3) If the state seeks to impose an adult sentence, the state must prove by a preponderance of the evidence that the imposition of an adult sentence is appropriate and that public safety requires imposition.

(4)(A) Following a hearing, the court may enter any of the following dispositions:

(i) Release the juvenile;

(ii) Amend or add any juvenile disposition; and

(iii)(a) Exercise its discretion to impose the full range of sentencing available in circuit court, including probation, suspended imposition of sentence, and imprisonment.

(b) A sentence of imprisonment shall not exceed forty (40) years, except juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, may be sentenced for any term, up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence or parole for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility.

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(ii) If release is ordered, the court shall impose a period of probation for not less than three (3) years.

(5)(A) A juvenile committed to the Division of Youth Services under extended juvenile jurisdiction shall not remain in the physical custody of the division beyond the date of his or her twenty-first birthday, even if the court fails to provide a hearing before the release.

(B) If a court order imposing an adult sentence or granting the absolute release of a juvenile is not entered on or before the juvenile's twenty-first birthday, the division shall release the juvenile from its custody.

(C) Nothing in this subdivision (e)(5) shall limit the court's jurisdiction to impose a period of probation on offenders adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, as required by subdivision (b)(2)(D) of this section.

History. Acts 1999, No. 1192, § 7; 2001, No. 1582, § 4; 2003, No. 1166, § 31; 2005, No. 1191, §§ 8, 9; 2009, No. 338, § 1; 2015, No. 1085, § 1.

Amendments. The 2015 amendment added (e)(5).

CASE NOTES

Time for Hearing.

Circuit court improperly held an extended juvenile jurisdiction review hearing and sentenced appellant, a juvenile when the crime of rape was committed, to an adult sentence because he had reached the age of 21 before the hearing was

scheduled and conducted, and before the sentencing order was entered. Review hearing under this section had to be held prior to a juvenile turning 21. *Z.L. v. State*, 2015 Ark. 484, 478 S.W.3d 207 (2015).

9-27-508. Extended juvenile jurisdiction records.

(a) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or

finding of guilt as an adult, or until the juvenile's twenty-first birthday, whichever is longer.

(b)(1) If an adult sentence is imposed upon an extended juvenile jurisdiction offender, the records of that case shall be considered adult criminal records.

(2)(A) The juvenile division of circuit court shall enter an order transferring the juvenile records to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal division of circuit court docket number and shall maintain the file as if the case had originated in the criminal division of circuit court.

History. Acts 1999, No. 1192, § 8;
2001, No. 1582, § 5.

9-27-509. Division of Youth Services — Commitment of extended juvenile jurisdiction juveniles.

(a) The court has sole release authority for juveniles in extended juvenile jurisdiction proceedings.

(b) In every case in which an order of commitment has been entered pursuant to an adjudication of delinquency, the facility to which the juvenile is committed shall, within thirty (30) days of the juvenile's commitment, prepare and file with the court a treatment case plan that shall:

(1) State the treatment plan for the juvenile; and

(2) State the anticipated length of commitment of the juvenile.

(c)(1) Upon determination that the juvenile has been rehabilitated, the Division of Youth Services may petition the court for release.

(2) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

(A) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(B) The nature of the offense or offenses and the manner in which they were committed;

(C) The recommendations of the professionals who have worked with the juvenile;

(D) The protection of public safety; and

(E) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(3) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

History. Acts 1999, No. 1192, § 9.

9-27-510. Division of Correction — Placement.

(a)(1) A juvenile who has received an adult sentence to the Division of Correction shall not be transported to the Division of Correction until the juvenile is sixteen (16) years of age.

(2) If a juvenile receives a sentence to the Division of Correction before the juvenile’s sixteenth birthday, the juvenile shall be housed by the Division of Youth Services until that date, except as provided by court order or parole decision made by the Parole Board.

(b) A juvenile sentenced in the criminal division of circuit court who is less than sixteen (16) years of age when sentenced shall be committed to the custody of the Division of Youth Services until his or her sixteenth birthday, at which time he or she shall be transferred to the Division of Correction.

(c)(1)(A) Juveniles sentenced to the Division of Correction pursuant to extended juvenile jurisdiction are subject to parole as any other inmate within the Division of Correction.

(B) Juveniles adjudicated for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, are subject to parole.

(2) Juveniles will be given credit for time served in a juvenile detention or juvenile facility against any adult sentence.

History. Acts 1999, No. 1192, § 10; 2001, No. 1582, § 6; 2019, No. 910, § 691.

Amendments. The 2019 amendment substituted “Division of Correction” for

“Department of Correction” in the section heading and throughout the section; and made a stylistic change.

SUBCHAPTER 6 — COMMUNITY MENTAL HEALTH SERVICES FOR JUVENILES

SECTION.	SECTION.
9-27-601. Legislative intent.	9-27-603. Mental health assessment —
9-27-602. Assessment of juvenile mental health services required.	Requirements.

9-27-601. Legislative intent.

It is the intent of the General Assembly of the State of Arkansas that:

(1) Juveniles receive mental health services in their communities whenever possible and in the least restrictive placement consistent with the juvenile’s treatment needs;

(2) Juveniles be placed out of state for mental health services only when it is in the juvenile’s best interest and there is no appropriate or available treatment in state to meet the needs of the juvenile;

(3) Circuit courts be provided with qualified mental health screenings to assist courts in ordering appropriate mental health services for juveniles; and

(4) Juvenile officers, mental health providers, residential providers, the Department of Human Services, Child and Adolescent Service System Program providers, attorneys, courts, and advocates shall work together to ensure the continuity of mental health services for juveniles in their communities.

History. Acts 2005, No. 1959, § 1. cent Service System Program, § 20-47-
Cross References. Child and Adoles- 501 et seq.

9-27-602. Assessment of juvenile mental health services required.

(a) Prior to the circuit court's ordering a juvenile to an out-of-state residential placement, excluding border state placements as defined by Medicaid, the court shall refer a juvenile for an assessment by the Department of Human Services or the department's designee to include, but not be limited to:

(1)(A) An assessment of the mental health services for the juvenile and the juvenile's family.

(B) If the assessment recommends that the juvenile cannot remain at home, all appropriate in-state placements currently available that are appropriate to meet the juvenile's mental health needs shall be presented to the court:

(i) With a preference for the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the family treatment plan;

(ii) That provide for the least restrictive placement ensuring the health and safety of the juvenile;

(iii) That provide an anticipated length of time needed for residential or inpatient treatment; and

(iv) That provide a plan for reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from treatment; and

(2)(A) The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services.

(B) If the assessment recommends that the juvenile cannot be served in the State of Arkansas, the assessment shall:

(i) Specify the reasons why the juvenile cannot be served in the state; and

(ii) Recommend what type of placement the child needs out of state and the reasons for such a recommendation.

(b) The department or its designee shall complete the out-of-state mental health assessment within five (5) business days of referral from the court.

(c) The assessment completed by the department or its designee shall be admitted into evidence, and the court shall consider the assessment in making its determination as to what services and placement should be ordered based on the best interest of the juvenile.

(d)(1) The court shall make a determination of the ability of the parent, guardian, or custodian of the juvenile to pay in whole or in part for mental health services.

(2) If the court determines an ability to pay, the court shall enter such an order for payment pursuant to § 9-27-333(e).

History. Acts 2005, No. 1959, § 2.

9-27-603. Mental health assessment — Requirements.

(a) When a mental health screening or assessment is provided to the juvenile division of a circuit court, the screening or assessment shall include, but not be limited to, the following:

(1) The mental health services needed for the juvenile and the juvenile’s family; and

(2) The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services.

(b) If the screening or assessment recommends that the juvenile cannot remain safely in his or her home, then the screening or assessment shall state the recommended type of residential treatment or inpatient treatment that is needed for the juvenile that:

(1) Meets the treatment needs of the juvenile;

(2) Allows the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the treatment plan;

(3) Provides for the least restrictive placement ensuring the health and safety of the juvenile;

(4) Provides an anticipated length of time needed for residential or inpatient treatment; and

(5) Provides a plan for the reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from residential or inpatient treatment.

History. Acts 2005, No. 1959, § 3.

SUBCHAPTER 7 — COMMISSION FOR PARENT COUNSEL

SECTION.	SECTION.
9-27-701. Legislative intent.	sel — Funding formula —
9-27-702. Definitions.	Liability.
9-27-703. Commission for Parent Coun- sel.	9-27-705. Rulemaking permitted.
9-27-704. Powers and duties of the Com- mission for Parent Coun-	

Effective Dates. Acts 2019, No. 871, § 24: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2019 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2019 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2019.”

9-27-701. Legislative intent.

It is the intent of the General Assembly to provide for representation for parents of a minor who is the subject of a dependency-neglect case in the juvenile division of circuit court.

History. Acts 2017, No. 861, § 6.

9-27-702. Definitions.

As used in this subchapter, “parent” means the same as under § 9-27-303, and “parent” also includes a guardian as defined under § 9-27-303 and a custodian as defined under § 9-27-303.

History. Acts 2017, No. 861, § 6.

9-27-703. Commission for Parent Counsel.

(a)(1)(A) There is created a Commission for Parent Counsel consisting of seven (7) members appointed to serve six-year staggered terms, each of whom shall serve until a qualified successor is appointed.

(B) The membership of the Commission for Parent Counsel shall be appointed in the following manner:

(i) Three (3) members appointed by the Governor;

(ii) One (1) member appointed by the President Pro Tempore of the Senate;

(iii) One (1) member appointed by the Speaker of the House of Representatives; and

(iv) Two (2) members appointed by the Chief Justice of the Supreme Court.

(C) A vacancy shall be filled in the same manner as a regular appointment.

(D) A member of the Commission for Parent Counsel may be reappointed to a successive term or terms or to fill another vacancy on the Commission for Parent Counsel.

(E) A member of the Commission for Parent Counsel shall not be currently active in any position within the child welfare system.

(2) At least two (2) of the members of the Commission for Parent Counsel shall be attorneys with at least ten (10) years of experience in dealing with child welfare legal matters, one (1) of whom shall be a former parent counsel, and at least one (1) member shall be a retired circuit court judge who served in the juvenile division of the circuit court.

(b) Each year the Commission for Parent Counsel shall elect a chair from its membership.

(c) Members of the Commission for Parent Counsel shall not receive pay for their services, but each member may receive expense reimbursement in accordance with § 25-16-901 et seq.

(d) A minimum of four (4) members of the Commission for Parent Counsel is necessary for a quorum.

(e)(1) Members of the Commission for Parent Counsel may meet or talk with each other, support staff and administrative staff, and attorneys who contract with the Commission for Parent Counsel to provide services concerning the quality and assessment of an attorney's representation of the attorney's clients without being subject to the requirements of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2)(A) Otherwise, all deliberations by the Commission for Parent Counsel shall be open to the public.

(B) A deliberation that includes a discussion, in whole or in part, of an attorney's representation of a specific client may be closed to the public in order to protect the client's privacy.

(f)(1) Financial support staff, financial data entry staff and facilities, and operating assistance for the Commission for Parent Counsel shall be provided by the Arkansas Public Defender Commission from funds that are specifically appropriated for that purpose by the General Assembly.

(2) However, the Arkansas Public Defender Commission shall not have oversight responsibility or authority over the Commission for Parent Counsel.

(3) Under no circumstances shall:

(A) The Commission for Parent Counsel exercise oversight of the Executive Director of the Arkansas Public Defender Commission;

(B) The Arkansas Public Defender Commission exercise oversight of the Executive Director of the Commission for Parent Counsel; and

(C) Either the Executive Director of the Arkansas Public Defender Commission or the Executive Director of the Commission for Parent Counsel be under the oversight of the other executive director.

History. Acts 2017, No. 861, § 6; 2019, No. 871, § 15.

A.C.R.C. Notes. Acts 2017, No. 861, § 7, provided:

"(a) The Commission for Parent Counsel shall hold its first meeting within ninety (90) days of the effective date of this act [August 1, 2017].

"(b) At the first meeting of the commission, the members shall draw lots for terms so that two (2) members will serve for a term of four (4) years; three (3) members will serve for a term of five (5) years; and two (2) members will serve for a term of six (6) years."

Amendments. The 2019 amendment, in (f)(1), substituted "Financial" for "General", inserted "financial data entry staff and", and substituted "Arkansas Public Defender Commission" for "Administrative Office of the Courts"; in (f)(2), substituted "Arkansas Public Defender Commission" for "office" and substituted "Commission for Parent Counsel" for "commission except when the commission requests that the office facilitate any contract with an attorney who has been approved for contract by the commission"; and added (f)(3).

9-27-704. Powers and duties of the Commission for Parent Counsel — Funding formula — Liability.

(a)(1) The Commission for Parent Counsel shall enter into contracts with attorneys in order to provide counsel required by the circuit court

in certain cases in the juvenile division of circuit court for a parent of a minor subject to a juvenile case.

(2) The Commission for Parent Counsel may employ or enter into independent professional service contracts with attorneys to represent a parent at the trial court level as well as at the appellate level.

(3) The Commission for Parent Counsel shall establish a funding formula to determine how an attorney is paid under this subchapter.

(b)(1) The Commission for Parent Counsel may hire or appoint an executive director who shall hire all staff required to implement this subchapter and shall advertise employment and contract opportunities.

(2) The Executive Director of the Commission for Parent Counsel shall report directly to the Commission for Parent Counsel.

(3)(A) The executive director is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all parents in dependency-neglect proceedings.

(B) An attorney obtaining employment or entering into a contract with the Commission for Parent Counsel shall be designated as the provider for representation of parents in dependency-neglect cases in each judicial district.

(C) An attorney appointed to represent a parent in a dependency-neglect proceeding shall comply with Supreme Court Administrative Order No. 15 concerning standards and qualifications.

(4) The executive director is charged with the authority and responsibility to establish and maintain a program that:

(A) Equitably serves all areas of the state;

(B) Provides quality representation; and

(C) Equitably and prudently makes use of state funding and resources.

(c) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for indigent parent or custodian representation in dependency-neglect cases, the funds appropriated under this subchapter shall be apportioned based upon a formula developed by the executive director and approved by the Commission for Parent Counsel.

(d) Neither the Arkansas Public Defender Commission nor the Commission for Parent Counsel is liable directly or indirectly to any attorney or to the Arkansas State Claims Commission for the payment of attorney's fees or expenses except to the extent specific funding is appropriated and available for the purpose of providing indigent parent counsel in dependency-neglect cases.

History. Acts 2017, No. 861, § 6; 2019, No. 333, § 1; 2019, No. 871, § 16.

Amendments. The 2019 amendment by No. 333 substituted "establish a funding formula to determine how an attorney is paid" for "establish guidelines to provide a maximum amount of expenses and

fees per hour and per case that shall be paid" in (a)(3).

The 2019 amendment by No. 871 substituted "employ or enter into independent professional service contracts" for "contract" in (a)(2); and substituted "Arkansas Public Defender Commission" for

“Administrative Office of the Courts” in (d).

9-27-705. Rulemaking permitted.

The Commission for Parent Counsel may establish rules not otherwise addressed by this subchapter for its own governing for the administrative affairs of the commission and to effectuate the intent of this subchapter.

History. Acts 2017, No. 861, § 6.

CHAPTER 28
PLACEMENT AND DETENTION PROGRAMS

SUBCHAPTER.

1. CHILDREN AND FAMILY SERVICES.
2. YOUTH SERVICES.
3. RANDOM HEALTH INSPECTIONS OF DIVISION OF YOUTH SERVICES FACILITIES.
4. CHILD WELFARE AGENCY LICENSING ACT.
5. KINSHIP FOSTER CARE. [REPEALED.]
6. THERAPEUTIC GROUP HOMES AND INDEPENDENT LIVING PROGRAMS.
7. COMMUNITY-BASED SANCTIONS.
8. HOUSING FOR JUVENILE OFFENDERS BETWEEN THE AGES OF EIGHTEEN AND TWENTY-ONE.
9. FOSTER PARENT SUPPORT ACT.
10. SAFEGUARDS FOR CHILDREN IN FOSTER CARE ACT.
11. ARKANSAS COALITION FOR JUVENILE JUSTICE BOARD. [REPEALED.]
12. YOUTH JUSTICE REFORM BOARD.

SUBCHAPTER 1 — CHILDREN AND FAMILY SERVICES

SECTION.

- 9-28-101. Legislative intent and purpose.
- 9-28-102. Creation of the Division of Children and Family Services.
- 9-28-103. Division of Children and Family Services — Powers and duties.
- 9-28-104. Best interest of the child.
- 9-28-105. Preference to relative caregivers for a child in foster care.
- 9-28-106. Religious preference — Removal of barriers to inter-ethnic adoption.
- 9-28-107. Notice when juvenile transferred to custody of department.
- 9-28-108. Placement of juveniles — Definitions.
- 9-28-109. Notice of move in foster care placement.

SECTION.

- 9-28-110. Smoking in the presence of foster children.
- 9-28-111. Case plans — Definition.
- 9-28-112. Foster children and educational issues.
- 9-28-113. Continuity of educational services to foster children.
- 9-28-114. Foster youth transition.
- 9-28-115. Immunity — Definition.
- 9-28-116. Restrictions on foster and adoptive parents.
- 9-28-117. Authority to obtain local criminal background checks.
- 9-28-118. Training hours for employees.
- 9-28-119. Department of Human Services — Power to obtain information — Definitions.
- 9-28-120. Public disclosure of information on deaths and maltreatment.

Effective Dates. Acts 2015, No. 1038, § 9: Apr. 4, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that federal law requires that the Department of Human Services amend the law addressed in this bill; that state law needs to comply with federal law; and that this act is necessary to avoid a violation of federal law. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2017, No. 894 § 6: Apr. 5, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that improvements are needed in the methods available for the provision of education for foster children; that expanding the educational options for foster children will enhance the chances of foster children to become healthy, well-rounded adults; and that this act is immediately necessary to ensure that foster children are given the greatest chance of achieving that outcome. Therefore, an emergency is declared

to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

9-28-101. Legislative intent and purpose.

The General Assembly recognizes that the state has a responsibility to protect children from abuse and neglect by providing services and supports that promote the safety, permanency, and well-being of the children and families of Arkansas.

History. Acts 2011, No. 591, § 1.

9-28-102. Creation of the Division of Children and Family Services.

There is created the Division of Children and Family Services within the Department of Human Services.

History. Acts 2011, No. 591, § 1.

9-28-103. Division of Children and Family Services — Powers and duties.

(a) The Division of Children and Family Services shall perform the following functions and have the authority and responsibility to:

(1) Coordinate communication between various components of the child welfare system;

(2) Provide services to dependent-neglected children and their families;

(3) Investigate reports of child maltreatment and assess the health, safety, and well-being of the child during the investigation;

(4) Provide services, when appropriate, designed to allow a maltreated child to safely remain in his or her home;

(5) Protect a child when remaining in the home presents an immediate danger to the health, safety, or well-being of the child;

(6) Ensure child placements support the goal of permanency for children when the division is responsible for the placement and care of a child; and

(7) Ensure the health, safety, and well-being of children when the division is responsible for the placement and care of a child.

(b) The division may promulgate rules necessary to administer this subchapter.

History. Acts 2011, No. 591, § 1.

9-28-104. Best interest of the child.

(a) The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children and that our child welfare system needs to be strengthened by establishing a clear policy of the state that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings.

(b) The best interest of the child shall be the standard for recommendations made by employees of the Department of Human Services as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

History. Acts 2011, No. 591, § 1.

CASE NOTES

Cited: Canerday-Banks v. Barton,
2018 Ark. App. 523 (2018).

9-28-105. Preference to relative caregivers for a child in foster care.

In all custodial placements by the Department of Human Services in foster care or adoption, preferential consideration shall be given to an adult relative over a nonrelated caregiver, if:

(1) The relative caregiver meets all relevant child protection standards; and

(2) It is in the best interest of the child to be placed with the relative caregiver.

History. Acts 2011, No. 591, § 1.

CASE NOTES**Placement With Relatives.**

Circuit court properly terminated a mother's parental rights to her child because the statutory provision for preferential consideration of placement with relatives was not found in the termination statute, and that preference was not relevant when considering termination of parental rights. *Donley v. Ark. Dep't of Human Servs.*, 2014 Ark. App. 335 (2014).

Circuit court clearly erred in denying a father's motion to place a child with the child's paternal uncle and the uncle's wife, who were stationed in Germany, where a home study did not show anything suggesting that placement with the relatives was not in the child's best interests or that the relatives were unfit, it failed to conduct a mandatory review hearing required by § 9-27-337, and thus, it had inappropriately ignored the statutory preference for relative placement in this section and § 9-27-355(b)(1). *Ellis v. Ark. Dep't of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

Ad litem's argument that the statutory preference for placement with relatives applies only to the initial placement was clearly wrong. Nowhere in § 9-27-355(b)(1) is there a limit to "initial placement." To the extent that the Court of Appeals has said this in *Davis v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 469, 375 S.W.3d 721, and other cases, the Court of Appeals is overruled. *Ellis v. Ark. Dep't of Human Servs.*, 2016 Ark. 441, 505 S.W.3d 678 (2016).

Circuit court properly terminated the mother's parental rights because the statutory provision for relative placement includes adoption, thus contemplating

that parental rights may be terminated even when a relative is available for placement; as the child was not in the custody of a relative at the time of termination, and termination was in the child's best interest, the exceptions in § 9-27-338 did not apply. *Robinson v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 251, 520 S.W.3d 702 (2017) (decided under prior version of statutes).

Circuit court did not err in terminating a father's parental rights on the ground that there was an available and appropriate relative placement with the father's mother where placement with the mother was considered on multiple occasions, but was denied because she did not have any income, relied solely on another son's disability benefits, and wanted to maintain contact between the child and the father. *Rosenbaum v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 680, 537 S.W.3d 282 (2017).

Decision to forego a relative-placement option with the Indiana grandparents in favor of terminating the mother's parental rights was clearly erroneous because the grandparents wanted to be involved in the case; the grandparents consistently attempted to communicate with some Arkansas authority about the children; the Department of Human Services did not fulfill its duty to try to locate the grandparents and communicate with them; the grandparents loved their grandchildren, had visited them, provided them gifts, wished to keep them in the family, and doggedly pursued that course; and the grandparents had a longstanding relationship with all four of the mother's children and stated that they would facilitate

visits between all the children. Clark v. Ark. Dep't of Human Servs., 2019 Ark. App. 223, 575 S.W.3d 578 (2019).

9-28-106. Religious preference — Removal of barriers to inter-ethnic adoption.

(a) The Department of Human Services and any other agency or entity that receives federal assistance and is involved in adoption or foster care placement shall not:

(1) Discriminate on the basis of the race, color, or national origin of either the adoptive parent, foster parent, or the child involved; or

(2) Delay the placement of a child on the basis of race, color, or national origin of the adoptive parent or foster parent.

(b) If a child's genetic parent or parents express a preference for placing the child in a foster home or an adoptive home of the same or a similar religious background to that of the genetic parent or parents, the department shall:

(1) Place the child with a family that meets the genetic parent's religious preference; or

(2) If a family with the same or a similar religious background is not available, to a family of a different religious background that is knowledgeable and appreciative of the child's religious background.

History. Acts 2011, No. 591, § 1.

9-28-107. Notice when juvenile transferred to custody of department.

(a) The Department of Human Services shall exercise due diligence to identify and provide notice to all adult grandparents, all parents of a sibling of the juvenile where the parent has legal custody of the sibling, and other adult relatives of a juvenile transferred to the custody of the department.

(b) The notice provided under this subsection shall:

(1) Be provided within thirty (30) days after the juvenile is transferred to the custody of the department; and

(2) Include adult grandparents or adult relatives suggested by the parent or parents of the juvenile.

(c) The department is not required to provide notice under subsection (b) of this section to an adult grandparent or other adult relative if the adult grandparent or other adult relative has:

(1) A pending charge or past conviction or plea of guilty or nolo contendere for family or domestic violence; or

(2) A true finding of child maltreatment in the Child Maltreatment Central Registry.

(d) The notice required under subsection (b) of this section shall state:

(1) That the juvenile has been or is being removed from the parent;

(2) The option to participate in the:

- (A) Care of the child;
- (B) Placement with the child; and
- (C) Visitation with the child;
- (3) That failure to respond to the notice may result in loss of options listed under subdivision (d)(2) of this section;
- (4) The requirements to become a provisional foster home and the additional services and supports that are available for children in a foster home; and
- (5) That if kinship guardianship is available, how the relative could enter into a kinship guardianship agreement with the department.
- (e) The department may provide notice of a juvenile transferred to the custody of the department to persons who have a strong, positive emotional tie to the juvenile and have a positive role in the juvenile's life but are not related by blood, adoption, or marriage.
- (f)(1) As used in this section, a "sibling" includes an individual who would have been considered a sibling of the child but for a termination or other disruption of parental rights.
- (2) This section shall not be construed as subordinating the rights of foster or adoptive parents of a child to the rights of the parents of a sibling of that child.

History. Acts 2011, No. 591, § 1; 2015, inserted "all parents of a sibling of the juvenile where the parent has legal custody of the sibling" in (a); and added (f).

Amendments. The 2015 amendment

9-28-108. Placement of juveniles — Definitions.

- (a) As used in this section:
- (1) "Fictive kin" means a person selected by the Division of Children and Family Services who:
 - (A) Is not related to a child by blood or marriage; and
 - (B) Has a strong, positive, and emotional tie or role in the:
 - (i) Child's life; or
 - (ii) Child's parent's life if the child is an infant; and
- (2) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption.
- (b)(1)(A) After the Department of Human Services removes a juvenile or the circuit court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency, as defined under § 9-28-402.
- (B) For a juvenile placed out of state, the placement shall be approved under the Interstate Compact on the Placement of Children, § 9-29-201 et seq.
- (2) When it is in the best interest of each of the juveniles, the department shall attempt to place:
 - (A) A sibling group together while they are in foster care and adoptive placement; and
 - (B) An infant of a minor mother together with the minor mother in foster care.

(c)(1) A relative of a juvenile placed in the custody of the department shall be given preferential consideration for placement if:

(A) The relative meets all required child protection standards; and

(B) It is in the best interest of the juvenile to be placed with the relative.

(2) Placement or custody of a juvenile in the home of a relative or other person shall not relieve the department of its responsibility to actively implement the goal of the case.

(3) If a relative or other person inquires about the placement of a juvenile in his or her home, the department shall discuss the following two (2) options with the relative or other person considering the placement of the juvenile:

(A) Becoming a department foster home; or

(B) Obtaining legal custody of the juvenile.

(4)(A) The juvenile shall remain in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined under § 9-28-402 until:

(i) The home is opened as a regular foster home;

(ii) The home is opened as a provisional foster home, if the person is a relative or fictive kin to one (1) of the children in the sibling group, including step-siblings; or

(iii) The court grants custody of the juvenile to the relative or fictive kin after a written approved home study is presented to the court.

(B) For placement with a relative or fictive kin:

(i) The juvenile and his or her siblings or step-siblings may be placed in the home of a relative or fictive kin of the juvenile on a provisional basis no more than six (6) months pending the home of the relative or fictive kin being opened as a regular foster home;

(ii) If the relative or fictive kin chooses to have his or her home opened as a provisional foster home, the relative or fictive kin shall not be paid a board payment until:

(a) The relative or fictive kin meets all of the foster home requirements; and

(b) The home of the relative or fictive kin is opened as a regular foster home;

(iii) The relative or fictive kin may apply for and receive benefits that the relative or fictive kin may be entitled to based on the placement of the juvenile in the home, such as benefits under the Transitional Employment Assistance Program, § 20-76-401, and the Supplemental Nutrition Assistance Program, until the home of the relative or fictive kin is opened as a regular foster home; and

(iv) If the home of the relative or fictive kin is not fully licensed as a foster home after six (6) months of the placement of the juvenile and any siblings or step-siblings in the home:

(a) The department shall remove the juvenile and any siblings or step-siblings from the relative or fictive kin's home and close the provisional foster home of the relative or fictive kin; or

(b) The court shall remove custody of the juvenile and any siblings or step-siblings from the department and grant custody to the relative or fictive kin subject to the limitations outlined in subdivision (c)(5) of this section.

(5) If the court grants custody of the juvenile and any siblings or step-siblings to the relative or other person:

(A)(i) The juvenile and any siblings or step-siblings shall not be placed back in the custody of the department while remaining in the home of the relative or other person.

(ii) The juvenile and any siblings or step-siblings shall not be removed from the custody of the relative or other person, placed in the custody of the department, and then remain or be returned to the home of the relative or other person while remaining in the custody of the department;

(B) The relative or other person shall not receive any financial assistance, including board payments, from the department, but may receive other financial assistance that the relative or other person has applied for and qualifies for under other program guidelines, such as the Transitional Employment Assistance Program, § 20-76-401, food stamps, Medicaid, and the federal adoption subsidy; and

(C) The department shall not be ordered to pay the equivalent of board payments or adoption subsidies to a relative or other person as reasonable efforts to prevent removal of custody from the relative.

(d)(1)(A) A court may order a juvenile who is in the custody of the department to be placed in a trial home placement with a parent of the juvenile or the person from whom custody of the juvenile was removed for:

(i) No longer than sixty (60) days; or

(ii) More than sixty (60) days but no longer than one hundred eighty (180) days with the consent of the department.

(B) The department may place a juvenile who is in its custody in a trial home placement with a parent of the juvenile or the person from whom custody of the juvenile was removed for no longer than one hundred eighty (180) days.

(C) A trial home placement with a parent who did not have custody of the juvenile at the time of the juvenile's removal into the custody of the department may be made only after the court or the department determines that:

(i) The trial home placement is in the best interest of the juvenile;

(ii) The noncustodial parent does not have a restriction on contact with the juvenile; and

(iii) There are no safety concerns related to the placement after reviewing:

(a) The criminal background of the noncustodial parent;

(b) The home of the noncustodial parent and each person in the home of the noncustodial parent; and

(c) Other information in the records of the department, including without limitation records concerning foster care, child maltreatment, protective services, and support services.

(2) At the end of the trial home placement the:

(A) Court shall place custody of the juvenile with the parent or the person from whom custody was removed; or

(B) Department shall return the juvenile to a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402.

(e) When a juvenile leaves the custody of the department and the court grants custody to the parent or another person, the department shall not be the legal custodian of the juvenile, even if the juvenile division of circuit court retains jurisdiction.

History. Acts 2011, No. 591, § 1; 2013, No. 478, §§ 2, 3; 2017, No. 700, § 2; 2019, No. 541, § 10.

Amendments. The 2017 amendment rewrote (a)(1).

The 2019 amendment rewrote (d).

CASE NOTES

Placement with Relatives.

Decision to forego a relative-placement option with the Indiana grandparents in favor of terminating the mother's parental rights was clearly erroneous because the grandparents wanted to be involved in the case; the grandparents consistently attempted to communicate with some Arkansas authority about the children; the Department of Human Services did not fulfill its duty to try to locate the grandparents and communicate with them; the

grandparents loved their grandchildren, had visited them, provided them gifts, wished to keep them in the family, and doggedly pursued that course; and the grandparents had a longstanding relationship with all four of the mother's children and stated that they would facilitate visits between all the children. *Clark v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 223, 575 S.W.3d 578 (2019).

Cited: *Ark. Dep't of Human Servs. v. Veasley*, 2016 Ark. App. 175 (2016).

9-28-109. Notice of move in foster care placement.

(a) The policy of the State of Arkansas is that each child placed in the custody of the Department of Human Services should have stable placements.

(b)(1) To reduce the number of placements of children in foster care, if a foster parent requests a foster child be removed from his or her home at any time, excluding an emergency that places the child or a family member at risk of harm, then the foster parent shall attend a staffing that shall be arranged by the Division of Children and Family Services within forty-eight (48) hours to discuss what services or assistance is needed to stabilize the placement.

(2) The foster child, the child's attorney ad litem, and a court-appointed special advocate, if appointed, shall be notified so that they may attend and participate in the staffing and planning for the placement of the child.

(3) If the placement cannot be stabilized, the foster parent shall continue to provide for the foster child for up to five (5) business days until an appropriate alternative placement is located.

(c)(1) Other changes in placement shall be made only after notification to the:

(A) Foster child;

- (B) Foster parent or parents;
- (C) Child's attorney ad litem;
- (D) Child's birth parents; and
- (E) Court having jurisdiction over the child.

(2) The notices shall:

(A) Be sent in writing two (2) weeks before the proposed change in placement unless the current placement is a temporary placement under subdivision (d)(1) of this section;

(B) State the reasons that justify the proposed change in placement;

(C) Convey to the attorney ad litem the address of the proposed new foster home or placement provider; and

(D) Convey to the child the name and telephone number of his or her attorney ad litem and a statement that if the child objects to the change in placement, the attorney ad litem may be able to assist the child in challenging the change in placement.

(d)(1) Exceptions to the advance notice requirement shall be made if the:

(A) Health or welfare of the child would be endangered by delaying a change in placement; or

(B) Child is placed in a placement intended to be temporary until a stable placement can be located for the child in accordance with department policy.

(2) Within twenty-four (24) hours of the change in placement the department shall:

(A) Notify the birth parent of the change;

(B) Notify the child's attorney ad litem of the change; and

(C) Provide the attorney ad litem with the name, address, and telephone number of the new foster care home or placement provider.

(3) Within seventy-two (72) hours of the change in placement, the department shall provide written notice to the attorney ad litem stating the specific reasons justifying the change of placement without advance notice.

(e)(1) If an agent, employee, or contractor of the department fails to comply with this section, an action for violation of this section may be filed with the court by any party to the action against the person who failed to comply with this section with the assessment of punishment to be determined by the court.

(2) If the court finds that the agent, employee, or contractor of the department failed to comply with this section, then the court may order the department or the agent, employee, or contractor to pay all the costs of the proceedings brought under this section.

History. Acts 2011, No. 591, § 1.

9-28-110. Smoking in the presence of foster children.

The Department of Human Services shall not place or permit a child to remain in a foster home, unless it is in the best interest of the child to be placed in or to remain in the foster home, if the foster parent:

- (1) Or any other member of the household smokes; or
- (2) Allows an individual to smoke in the presence of a foster child.

History. Acts 2011, No. 591, § 1.

9-28-111. Case plans — Definition.

(a) The Department of Human Services shall be responsible for developing case plans in all dependency-neglect cases and in family-in-need-of-services cases when custody is transferred to the department under § 9-27-328. The case plan shall be:

(1)(A) Developed in consultation with the juvenile's parent, guardian, or custodian and, if appropriate, the juvenile, the juvenile's foster parents, the court-appointed special advocate, the juvenile's attorney ad litem, and all parties' attorneys.

(B) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document the parents' unwillingness or inability to participate and provide a copy of the written documentation to the parent, if available. The department shall then prepare a case plan conforming as nearly as possible with the requirements set forth in this section.

(C) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan.

(D)(i) The parent, guardian, or custodian and juvenile may choose additional members to be part of the case planning team.

(ii) The department may reject a selected individual for good cause;

(2)(A) Developed and filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner.

(B) If the department does not have sufficient information before the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available.

(C) All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing;

(3) Signed by and distributed to all parties and distributed to the juvenile's attorney ad litem, court-appointed special advocate, and foster parents, if available; and

(4)(A) Subject to modification based on changing circumstances.

(B) All parties to the case plan shall be notified of any substantive change to the case plan.

(C) A substantive change to a case plan includes without limitation a change in the placement of the juvenile, the visitation rights of any party, or the goal of the case plan.

(b) When a juvenile is receiving services in the home of the parent, guardian, or custodian, the case plan shall include the requirements listed in subsection (a) of this section and:

- (1) A description of the problems being addressed;
- (2) A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
- (3) A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to assure to all the parents meaningful access to reunification and family preservation services;
- (4) The name of an individual who the petitioner, parent, guardian, or custodian knows is claiming to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and
- (5) A description of how the health and safety of the juvenile will be protected.

(c) When a juvenile is receiving services in an out-of-home placement, the case plan must include the requirements in subsections (a) and (b) of this section and:

- (1)(A) A description of the permanency goal.
(B) If adoption is not the goal at the permanency planning and fifteenth-month hearing, the department shall document in the case plan a compelling reason why filing a petition to terminate parental rights is not in the best interest of the juvenile;
- (2) The specific reasons for the placement of the juvenile outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian that required removal of the juvenile and the remediation of which will determine the return of the juvenile to the home;
- (3) A description of the type of out-of-home placement selected for the juvenile, including a discussion of the appropriateness of the placement;
- (4) A plan for addressing the needs of the juvenile while in the placement, with emphasis on the health, safety, and well-being of the juvenile, including a discussion of the services provided over the previous six (6) months;
- (5)(A) The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the time period during which the specific actions are to be taken.
(B) The plan may include any person or agency who agrees to be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile;
- (6) The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the time period the juvenile is in the out-of-home placement;
- (7) The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during

the time period the juvenile is in placement and a timetable for providing the services, the purposes of which are to promote a continuous and stable living environment for the juvenile, promote family autonomy, strengthen family life when possible, and promote the reunification of the juvenile with the parent, guardian, or custodian;

(8) To the extent available and accessible, the health and education records of the juvenile, under 42 U.S.C. § 675(1);

(9) A description of the financial support obligation to the juvenile, including health insurance of the parent, parents, or guardian of the juvenile;

(10)(A) A description of the location of siblings;

(B) Documentation of the efforts made to place siblings removed from their home in the same placement, unless the department documents that a joint placement would be contrary to the safety or well-being of any of the siblings; and

(C) Documentation of the efforts made to provide for frequent visitation or other ongoing interaction between the siblings in the case of siblings removed from their home who are not placed together, unless the department documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

(11) When appropriate for a juvenile sixteen (16) years of age and over, the case plan shall include a written description of the programs and services that will help the juvenile prepare for the transition from foster care to independent living;

(12) A written notice to the parent or parents that failure of the parent or parents to substantially comply with the case plan may result in the termination of parental rights and that a material failure to substantially comply may result in the filing of a petition for termination of parental rights sooner than the compliance periods stated in the case plan;

(13)(A) A plan for ensuring the placement of the child in foster care that takes into account the appropriateness of the current educational setting and the proximity of the school in which the child is enrolled at the time of placement, as required under § 9-27-103 [repealed]; and

(B)(i) An assurance that the department has coordinated with appropriate local educational agencies to ensure that the child remains at the school where the child is enrolled at the time of placement; or

(ii) If remaining at the school is not in the best interest of the child, assurances by the department and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school; and

(C)(i) An assurance that each child who has attained the minimum age for compulsory school attendance is a full-time elementary or secondary school student or has completed secondary school.

(ii) For purposes of this section, “elementary or secondary school student” means, with respect to a child, that the child is:

(a) Enrolled, or in the process of enrolling, in a public elementary or secondary school;

(b) Home schooled under § 6-15-501 et seq.;

(c) Enrolled in a private elementary or secondary school; or

(d) Incapable of attending school on a full-time basis due to the medical condition of the child, and the medical condition incapability is supported by regularly updated information in the case plan;

(14) The department, in conjunction with other representatives of the juvenile, shall provide the juvenile with assistance and support in developing a transition plan that is personalized at the direction of the juvenile and includes specific options on housing, health insurance, educational opportunities, local opportunities for mentors and continuing support services, and workforce supports and employment services, and is as detailed as the juvenile may elect as required under § 9-27-363; and

(15) When a juvenile is fourteen (14) years of age or older, the juvenile shall be provided a:

(A) Separate document that describes:

(i) The rights of the juvenile concerning education, health, visitation, and court participation;

(ii) The right to obtain a copy of a credit report each year the juvenile remains in the custody of the department at no cost to the juvenile; and

(iii) The right of the juvenile to receive assistance in interpreting and resolving inaccuracies in the credit report; and

(B) A signed acknowledgement by the juvenile that:

(i) The juvenile has been provided with a copy of the document required under subdivision (c)(15)(A) of this section; and

(ii) The department explained the rights to the juvenile in a developmentally appropriate and age-appropriate way.

(d) The case plan is subject to court review and approval.

(e) The participation of a parent, guardian, or custodian in the development of a case plan or the acceptance of a case plan shall not constitute an admission of dependency-neglect.

History. Acts 2011, No. 591, § 1; 2015, No. 1038, §§ 6, 7.

Amendments. The 2015 amendment added (a)(1)(D); and added (c)(15).

9-28-112. Foster children and educational issues.

(a) The Department of Human Services and school districts shall work together for the best interest of any child placed in the custody of the department.

(b) By the next business day after the department exercises a seventy-two-hour hold on a child or a court places custody of a child with the department, the department shall inform the child’s current

school district, regardless of whether the child remains at his or her current school, that:

(1) The department has exercised a seventy-two-hour hold on the child; or

(2) The court has placed the child in the custody of the department.

(c) By the next business day after a foster child transfers to a new placement, the department shall notify the child's current school that the foster child has transferred to a new placement.

(d) By the next business day after the department reasonably believes that a foster child has experienced a traumatic event, the department may notify the school counselor of the child that the department reasonably believes that the foster child has experienced a traumatic event.

(e) By the next business day after the department knows that a foster child has experienced a traumatic event through an investigation or an ongoing protective services case, the department may notify the school counselor of the child of the traumatic event that the department has knowledge of through an investigation or an ongoing protective services case.

(f) The school counselor of the child may share information reported to the counselor under subsections (d) and (e) of this section with the school principal and the teachers of the child, if appropriate.

(g)(1) The department or its designee, who may be a foster parent, shall make educational decisions for a child in the custody of the department related to general educational matters, subject to limitation only by the court having jurisdiction of the custody matter.

(2) For educational matters under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., a foster parent may make decisions for a child in the custody of the department.

History. Acts 2011, No. 591, § 1.

9-28-113. Continuity of educational services to foster children.

(a)(1)(A) It is the intent of the General Assembly that each child in foster care is:

(i) Entitled to the same opportunities to meet the academic achievement standards to which all children are held;

(ii) Assisted so that the child can remain in his or her school of origin;

(iii) Placed in the least restrictive educational placement; and

(iv) Given the same access to academic resources, services, and extracurricular enrichment activities as all other children.

(B) Decisions regarding the education of a child in foster care shall be based on what is in the best interest of the child.

(2)(A) Individuals directly involved in the care, custody, and education of a foster child shall work together to ensure continuity of educational services to the foster child, including without limitation:

(i) Educators;

- (ii) The Department of Human Services;
- (iii) The Division of Elementary and Secondary Education;
- (iv) The circuit court presiding over the foster care case;
- (v) Providers of services to the foster child;
- (vi) Attorneys;
- (vii) Court-appointed special advocates; and
- (viii) Parents, guardians, or any persons appointed by the court.

(B) The individuals in subdivision (a)(2)(A) of this section shall ensure the continuity of educational services so that a foster child:

- (i) Can remain in his or her school of origin whenever possible;
- (ii) Is moved to a new school in a timely manner when it is necessary, appropriate, and in the best interest of the child under this section;
- (iii) Can participate in the appropriate educational programs; and
- (iv) Has access to the academic resources, services, and extracurricular enrichment activities that are available to all students.

(b)(1) A foster child shall have continuity in his or her educational placements.

(2) The Department of Human Services shall consider continuity of educational services and school stability in making foster placement decisions.

(3) The school district shall allow the foster child to remain in the child's school of origin and continue the child's education unless the court finds that the placement:

- (A) Is not in the best interest of the child; and

(B) Conflicts with any other provision of current law, excluding the residency requirement under § 6-18-202.

(4)(A) The school district will work with the Department of Human Services to develop a transportation plan to ensure continuity of educational services, to the extent reasonable and practical.

(B) The school district is encouraged to arrange for transportation for the child to enable him or her to remain in his or her school of origin.

(C) The school district shall provide transportation for the child if reasonable and practical and if an additional expense will not be imposed on the district.

(5) Except for emergencies, before making a recommendation to move a child from his or her school of origin, the Department of Human Services shall state the basis for the recommended school change and how it serves the best interest of the child in a written statement to the following:

- (A) The foster child;
 - (B) The child's attorney ad litem;
 - (C) The court-appointed special advocate, if appointed; and
 - (D) Parents, guardians, or any person appointed by the court.
- (6)(A) If the court transfers custody of a child to the Department of Human Services, the court shall issue an order containing the following determinations regarding the educational issues of the child and whether the parent or guardian of the child may:

- (i) Have access to the child's school records;
- (ii) Obtain information on the current placement of the child, including the name and address of the child's foster parent or provider, if the parent or guardian has access to the child's school records; and
- (iii) Participate in school conferences or similar activities at the child's school.

(B) If the court transfers custody of a child to the Department of Human Services, the court may appoint an individual to consent to an initial evaluation of the child and serve as the child's surrogate parent under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on February 1, 2007.

(c)(1) Each school district shall identify a foster care liaison.

(2) Each school district shall forward the name of each foster care liaison and the contact information to the Special Education Unit of the Division of Elementary and Secondary Education at the beginning of each school year.

(3) The foster care liaison shall:

(A) Ensure and facilitate the timely school enrollment of each foster child;

(B) Assist a foster child who transfers between schools by ensuring the transfer of credits, records, grades, and any other relevant school records; and

(C)(i) Expedite the transfer of records.

(ii) When a foster child changes school placement, the foster care liaison in the new school district shall request the child's educational record, as defined by rule of the Division of Elementary and Secondary Education, from the foster care liaison in the child's previous school district within three (3) school days.

(iii) The foster care liaison from the previous school district shall provide all relevant school records to the foster care liaison at the new school district within ten (10) school days of receipt of the request under subdivision (c)(3)(C)(ii) of this section.

(d)(1) If a foster child is subject to a school enrollment change, the foster child's caseworker shall contact the school district foster care liaison within two (2) business days, and the new school must immediately enroll the foster child even if the foster child is unable to provide the required clothing or required records, including without limitation:

(A) Academic records;

(B) Medical records; or

(C) Proof of residency.

(2) The Department of Human Services shall provide all known information to the school district that impacts the health and safety of the child being enrolled or other children in the school.

(e)(1) A school district shall recognize the rights of a foster parent to make educational decisions for a foster child under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., if the foster parent is qualified.

(2) A foster parent may have educational rights with respect to consenting to the individualized educational program and related services if the court has specifically limited the educational rights of the parent and the child is in foster care.

(f) The grades of a child in foster care shall not be lowered due to absence from school due to:

(1) A change in the child's school enrollment;

(2) The child's attendance at a dependency-neglect court proceeding;

or

(3) The child's attendance at court-ordered counseling or treatment.

(g) Each school district shall accept credit course work when the child demonstrates that the child has satisfactorily completed the appropriate educational placement assessment.

(h) If a child completes the graduation requirements of the child's school district while being detained in a juvenile detention facility or while being committed to the Division of Youth Services, the school district that the child last attended before the child's detention or commitment shall issue the child a diploma.

(i) This section shall not be interpreted to be in conflict with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and regulations promulgated.

(j)(1) Notwithstanding any of the provisions of this section, if it is in the best interest of the child, a foster child may be placed in a nonpublic school, including a private, parochial, or home school.

(2)(A) Except as provided in subdivision (j)(2)(B) of this section, state or federal funding shall not be used for the placement of a foster child in a nonpublic school, including a private, parochial, or home school.

(B) The prohibition under subdivision (j)(2)(A) of this section shall not apply to a foster child who receives a Succeed Scholarship under § 6-41-901 et seq.

History. Acts 2011, No. 591, § 1; 2015, No. 1094, § 7; 2017, No. 894, § 5; 2019, No. 757, § 65; 2019, No. 910, §§ 2196-2198.

Amendments. The 2015 amendment substituted "school of origin" for "current school" in (a)(1)(A)(ii), (a)(2)(B)(i), the introductory language of (b)(3), and the introductory language of (b)(5); inserted present (b)(4)(A); redesignated former (b)(4) as (b)(4)(B); substituted "school of origin" for "current school if reasonable and practical" in (b)(4)(B); and added (b)(4)(C).

The 2017 amendment redesignated former (j) as (j)(1) and (j)(2)(A); rewrote (j)(2)(A); and added (j)(2)(B).

The 2019 amendment by No. 757 substituted "Special Education Unit" for "Special Education Section" in (c)(2).

The 2019 amendment by No. 910 substituted "Division of Elementary and Secondary Education" for "Department of Education" in (a)(2)(A)(iii), (c)(2), and (c)(3)(C)(ii).

RESEARCH REFERENCES

ALR. Construction and Application of 34 C.F.R. § 300.502, and Prior Codifica-

tions, Providing for Independent Educational Evaluation under Individuals With

Disabilities Education Act, (20 U.S.C. §§ 1400 et seq.). 10 A.L.R. Fed. 3d Art. 2 (2016).

9-28-114. Foster youth transition.

(a) The General Assembly finds that:

(1) Each juvenile in foster care should have a family for a lifetime, but too many juveniles in foster care reach the age of majority without being successfully reunited with their biological families and without the security of permanent homes;

(2) A child in foster care who is approaching the age of majority shall be provided the opportunity to be actively engaged in the planning of his or her future; and

(3) The Department of Human Services shall:

(A) Include the child in the process of developing a plan to transition the child into adulthood;

(B) Empower the child with information about all of the options and services available;

(C) Provide the child with the opportunity to participate in services tailored to his or her individual needs and designed to enhance his or her ability to receive the skills necessary to enter adulthood;

(D) Assist the child in developing and maintaining healthy relationships with nurturing adults who can be resources and positive guiding influences in his or her life after he or she leaves foster care; and

(E) Provide the child with basic information and documentation regarding his or her biological family and personal history.

(b)(1) The department shall assist a juvenile in foster care or entering foster care with the development of a transitional life plan when the juvenile turns fourteen (14) years of age or within ninety (90) days of his or her fourteenth birthday, whichever occurs first.

(2) The plan shall include without limitation written information and confirmation concerning:

(A) The juvenile's right to stay in foster care after reaching eighteen (18) years of age for education, treatment, or work and specific programs and services, including without limitation the John H. Chafee Foster Care Program for Successful Transition to Adulthood and other transitional services; and

(B) The juvenile's case, including his or her biological family, foster care placement history, tribal information, if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to a sibling would jeopardize the safety or welfare of the sibling.

(c) The department shall assist the juvenile with:

(1) Completing applications for:

(A) ARKids First, Medicaid, or assistance in obtaining other health insurance;

(B) Referrals to transitional housing, if available, or assistance in securing other housing; and

(C) Assistance in obtaining employment or other financial support;

(2) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and

(3) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as resources based on the best interest of the juvenile.

(d) A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally.

(e)(1) If a juvenile does not have the capacity to successfully transition into adulthood without the assistance of the Adult Protective Services Unit of the Department of Human Services, the Division of Children and Family Services shall make a referral to the unit no later than six (6) months before the juvenile reaches eighteen (18) years of age or upon entering foster care, whichever occurs later.

(2) A representative from the unit shall attend and participate in the transitional youth staffing, and information shall be provided to all of the parties about what services are available and how to access services for the youth after reaching the age of majority.

(f) Before closing a case, the department shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

(1) Social Security card;

(2) Certified birth certificate or verification of birth record, if available or if it should have been available to the department;

(3) Family photos in the possession of the department;

(4)(A) All of the juvenile's health records for the time the juvenile was in foster care and any other medical records that were available or should have been available to the department.

(B) A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private;

(5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department; and

(6) Driver's license or a state-issued official identification card.

(g) Within thirty (30) days after the juvenile leaves foster care, the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available.

(h) The department shall not request a circuit court to close a family-in-need-of-services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section.

(i) The department shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held.

History. Acts 2011, No. 591, § 1; 2015, No. 1033, § 2; 2015, No. 1038, § 8; 2019, No. 663, § 2.

Amendments. The 2015 amendment by No. 1033 redesignated the former first paragraph of (b) as (b)(1) and (2); in present (b)(1), substituted “assist a juvenile ... whichever occurs first” for “develop a transitional plan with every juvenile in foster care not later than the juvenile’s seventeenth birthday or within ninety (90) days of entering a foster care program for juveniles who enter foster care at seventeen (17) years of age or older”; redesignated

former (b)(1) and (2) as (b)(2)(A) and (B); substituted “based on the best interest of the juvenile” for “to the juvenile based on his or her best interest” in (c)(3); inserted (e); and redesignated the remaining subsections accordingly.

The 2015 amendment by No. 1038 added (e)(6) (now (f)(6)).

The 2019 amendment substituted “John H. Chafee Foster Care Program for Successful Transition to Adulthood” for “John H. Chafee Foster Care Independence Program” in (b)(2)(A).

9-28-115. Immunity — Definition.

(a) A foster parent approved by a child placement agency licensed by the Department of Human Services shall not be liable for:

(1) Damages caused by a foster child; or

(2) Injuries to a foster child caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

(b) A volunteer approved by the department to transport a foster child or client of the department or to supervise visits at the request of the department shall not be liable to a foster child, the client, or the parent or guardian of a foster child for injuries to a foster child or client caused by the acts or omissions of a volunteer unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

(c) An approved volunteer who performs home studies without compensation shall have immunity from liability as provided for state officers and employees under § 19-10-305. As used in this subsection, “approved volunteer” means a volunteer approved by:

(1) The department; and

(2) Any organization operating under a memorandum of understanding with the department for the completion of home studies.

History. Acts 2011, No. 591, § 1.

9-28-116. Restrictions on foster and adoptive parents.

(a)(1) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Division of Arkansas State Police at a minimum of every two (2) years for convictions of the offenses listed in this subchapter and in § 9-28-409.

(2) Youths in a household who turn eighteen (18) years of age are not required to have a criminal background check until six (6) months after turning eighteen (18) years of age.

(b) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation for convictions of the offenses listed in this subchapter and in § 9-28-409.

(c) A foster child in the custody of the Department of Human Services, or a foster child in the custody of another state, shall not be placed in the home of any Arkansas foster or adoptive parent if the criminal records check reveals a felony conviction for:

- (1) Child abuse or neglect;
- (2) Spousal abuse or domestic battery;
- (3) A crime against children, including child pornography;
- (4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or
- (5) Aggravated assault on a family or household member.

(d) A foster child in the custody of the Department of Human Services, or a foster child in the custody of another state, shall not be placed in the home of any foster or adoptive parent if the criminal record check reveals a felony conviction for physical assault, battery, or a drug-related offense if the offense was committed within the past five (5) years.

History. Acts 2011, No. 591, § 1; 2015, No. 547, § 2. substituted “eighteen and one-half (18½)” for “eighteen (18)” in (a) and (b); and

Amendments. The 2015 amendment added (a)(2).

9-28-117. Authority to obtain local criminal background checks.

(a) Local law enforcement shall provide the Department of Human Services with criminal background information on persons who have applied to be a provisional foster home, a regular foster home, or an adoptive home for the department upon request from the department.

(b) Local law enforcement shall provide the department with criminal background information on persons whose home is being studied by the department upon request from the department.

History. Acts 2011, No. 591, § 1.

9-28-118. Training hours for employees.

All Division of Children and Family Services caseworkers, supervisors, and area directors shall have at least one (1) hour of annual training on issues related to:

- (1) Separation and placement; and
- (2) The grief and loss that children experience in foster care with multiple placements.

History. Acts 2011, No. 591, § 1.

9-28-119. Department of Human Services — Power to obtain information — Definitions.

(a) As used in this section:

(1) “Business” means any corporation, partnership, cable television company, association, individual, or utility company that is organized privately, as a cooperative, or as a quasi-public entity, and labor or other organization maintaining an office, doing business, or having a registered agent in the State of Arkansas;

(2) “Financial entity” means any bank, trust company, savings and loan association, credit union, or insurance company or any corporation, association, partnership, or individual receiving or accepting money or its equivalent on deposit as a business in the State of Arkansas;

(3) “Information” means, without limitation, the following:

(A) The full name of a parent, a putative father, or relative;

(B) The Social Security number of a parent or a putative father;

(C) The date of birth of a parent, a putative father, or relative;

(D) The last known mailing address and residential address of a parent, a putative father, or relative;

(E) The amount of wages, salaries, earnings, or commissions earned by a parent or a putative father; and

(F) A certified copy of an acknowledgement of paternity;

(4) “Parent” means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(5) “Putative father” means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile and who claims or is alleged to be the biological father of the juvenile;

(6) “Relative” means an adult grandparent, adult aunt, or adult uncle of the child; and

(7) “State or local government agency” means a department, a board, a bureau, a commission, an office, or other agency of this state or any local unit of government of this state.

(b)(1) The Department of Human Services may request and receive information from the Federal Parent Locator Service, from available records in other states, territories, and the District of Columbia, from the records of all state agencies, and from businesses and financial entities for the purpose of locating a parent, a putative father, or a relative and for the purpose of determining resources of a parent or a putative father.

(2) The Secretary of the Department of Human Services may enter into cooperative agreements with other state agencies, businesses, or financial entities to provide direct online access to data information terminals, computers, or other electronic information systems.

(3) State and local government agencies, businesses, and financial entities shall provide information, if known or chronicled in their business records, notwithstanding any other provision of law making the information confidential.

(4) In addition, the Department of Human Services may, under an agreement with the United States Secretary of Health and Human Services, or his or her designee, request and receive from the Federal Parent Locator Service information authorized under 42 U.S.C. § 653, for the purpose of determining the whereabouts of a parent or child. This information may be requested and received when it is to be used to locate the parent or child for the purpose of enforcing a state or federal law with respect to the unlawful taking or restraining of a child or for the purpose of making or enforcing a child custody determination.

(c) Any business or financial entity that has received a request from the Department of Human Services as provided by subsection (b) of this section shall further cooperate with the Department of Human Services in discovering, retrieving, and transmitting information contained in the business records that would be useful in locating absent parents or relatives and shall provide the requested information or a statement that any or all of the requested information is not known or available to the business or financial entity. This shall be done within thirty (30) days of receipt of the request, or the business or financial entity shall be liable for civil penalties of up to one hundred dollars (\$100) for each day after the thirty-day period in which it fails to provide the requested information.

(d) Any business or financial entity or any officer, agent, or employee of the business or financial entity participating in good faith and providing information requested under this section shall be immune from liability and suit for damages that might otherwise result from the release of the information to the Department of Human Services.

(e) Any information obtained under the provisions of this section shall become a business record of the Department of Human Services, subject to the privacy safeguards set out in § 9-28-407.

History. Acts 2011, No. 591, § 1; 2015, No. 546, § 1; 2019, No. 910, § 5134.

Amendments. The 2015 amendment added (a)(3)(F).

The 2019 amendment substituted “Secretary of the Department of Human Services” for “Director of the Department of Human Services” in (b)(2).

9-28-120. Public disclosure of information on deaths and maltreatment.

(a)(1) The Department of Human Services shall place a notice on the department’s web page when a fatality or near fatality of a child is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq., within seventy-two (72) hours of receipt of a report from the hotline.

(2) The notice of a reported fatality or near fatality of a child shall state the:

- (A) Age, race, and gender of the child;
 - (B) Date of the child's death or incident;
 - (C) Allegations or preliminary cause of death or incident;
 - (D) County and type of placement of the child at the time of incident;
 - (E) Generic relationship of the alleged offender to the child;
 - (F) Agency conducting the investigation;
 - (G) Legal action by the department; and
 - (H) Services offered or provided by the department presently and in the past.
- (3) The notice of a fatality of a child shall also include the name of the child.
- (4) The department shall not put on the web page any:
- (A) Information on siblings of the child; or
 - (B) Attorney-client communications.
- (5) The department may elect not to place notice on the department's web page if:
- (A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and
 - (B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.
- (b)(1) Upon request, the department shall release the following information to the general public when a hotline report is received on a child in the custody of the department, and the department may identify if the child maltreatment act or omission occurred before or after the child was placed in the custody of the department:
- (A) Age, race, and gender of the child;
 - (B) Allegations of maltreatment;
 - (C) County and placement of the child at the time of the incident;
 - (D) Generic relationship of the alleged offender to the child; and
 - (E) Action taken by the department.
- (2) The department shall not release:
- (A) Information on siblings of the child; or
 - (B) Attorney-client communications.
- (3) The department shall not release any information if:
- (A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and
 - (B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.
- (c)(1) Upon request, the department shall release the following information when a child dies if that child was in an out-of-home placement as defined under § 9-27-303(40):
- (A) Age, race, and gender of the child;
 - (B) Date of the child's death;
 - (C) Preliminary cause of death;
 - (D) County and type of placement of the child at the time of the incident; and
 - (E) Action by the department.

- (2) The department shall not release:
 - (A) Information on siblings of the child; or
 - (B) Attorney-client communications.
- (3) The department shall not release any information if:
 - (A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and
 - (B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.

History. Acts 2011, No. 591, § 1; 2013, No. 1181, § 1.

SUBCHAPTER 2 — YOUTH SERVICES

SECTION.

- 9-28-201. Legislative intent and purpose.
- 9-28-202. Creation of the Division of Youth Services — Director.
- 9-28-203. Division of Youth Services — Powers and duties.
- 9-28-204. Observation and assessment center.
- 9-28-205. Youth services centers.
- 9-28-206. Disposition of delinquent juvenile.
- 9-28-207. Commitment to the Division of Youth Services.
- 9-28-208. Order of commitment.
- 9-28-209. Commitment conditions and terms.

SECTION.

- 9-28-210. Release.
- 9-28-211. Escape from youth services center or facilities.
- 9-28-212. Sale of goods produced at youth services centers — Disposition of funds.
- 9-28-213. [Repealed.]
- 9-28-214. Penalty for escape.
- 9-28-215. Departure without authorization — Release of information — Definition.
- 9-28-216. Separation of juvenile offenders — Rules — Review.
- 9-28-217. Juvenile records confidentiality.

A.C.R.C. Notes. The repeal of former §§ 9-28-204 and 9-28-209 by Acts 1995, No. 1261 were deemed to supersede the amendments by Acts 1995, No. 1335.

Publisher's Notes. As to jurisdiction of the circuit court over certain proceedings, see § 9-27-306.

Former subchapter 2, concerning youth services, was repealed by Acts 1995, No. 1261, § 18. The former subchapter was derived from the following sources:

- 9-28-201. Acts 1977, No. 502, § 1; A.S.A. 1947, § 45-501.
- 9-28-202. Acts 1977, No. 502, §§ 2, 14; A.S.A. 1947, §§ 45-502, 45-514.
- 9-28-203. Acts 1977, No. 502, §§ 3, 12; A.S.A. 1947, §§ 45-503, 45-512.
- 9-28-204. Acts 1977, No. 502, § 4; A.S.A. 1947, § 45-504; Acts 1994 (2nd Ex. Sess.), No. 44, § 2; 1995, No. 1335, § 4.
- 9-28-205. Acts 1977, No. 502, § 6; A.S.A. 1947, § 45-506.
- 9-28-206. Acts 1977, No. 502, § 5; A.S.A. 1947, § 45-505.

9-28-207. Acts 1977, No. 502, §§ 9, 13; 1979, No. 26, § 1; A.S.A. 1947, §§ 45-509, 45-513.

9-28-208. Acts 1977, No. 502, § 7; A.S.A. 1947, § 45-507.

9-28-209. Acts 1977, No. 502, § 8; A.S.A. 1947, § 45-508; Acts 1991, No. 763, § 3; 1994 (2nd Ex. Sess.), No. 44, § 1; 1995, No. 1335, § 5.

9-28-210. Acts 1977, No. 502, § 11; 1985, No. 292, § 1; A.S.A. 1947, § 45-511; Acts 1991, No. 763, § 4; 1993, No. 974, § 1.

9-28-211. Acts 1977, No. 502, § 10; A.S.A. 1947, § 45-510.

9-28-212. Acts 1977, No. 502, § 13; 1979, No. 26, § 1; A.S.A. 1947, § 45-513.

9-28-213. Acts 1977, No. 502, § 15; A.S.A. 1947, § 45-515.

Cross References. Department of Human Services, § 25-10-102 et seq.

Effective Dates. Acts 1997, No. 312, § 24; Feb. 28, 1997. Emergency clause

provided: "It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 397, § 5: Mar. 7, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the identity and description of juvenile escapees cannot now be released to the public or even law enforcement agencies; that this confidentiality of information hampers the apprehension of persons who may be a threat to themselves or others; that this act will authorize the release of information to aid in the apprehension of juvenile escapees; and that this act should go into effect immediately in order to provide both law enforcement agencies and the public a greater ability to apprehend juvenile escapees as soon as possible. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in

the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective." The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Acts 2009, No. 956, § 34: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 972, § 3: Apr. 6, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the educa-

tion provided in the Division of Youth Services facilities is lacking; that all children, including those housed in Division of Youth Services facilities should be afforded a suitable education; and that this act is immediately necessary to allow the Department of Education to assist the Division of Youth Services in implementing a system of education that will impact all students housed in the Division of Youth Services facilities. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Identical Acts 2016 (3rd Ex. Sess.), Nos. 16 and 17, § 2: May 23, 2016. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that access to juvenile records for purposes of bona fide research promotes informed decision making and improves case planning for delinquent youth. This act is immediately necessary to ensure that Arkansas is implementing risk and needs assessments with fidelity to improve outcomes for youth and juvenile justice. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 189, § 15: July 1, 2020.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

RESEARCH REFERENCES

ALR. Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 A.L.R.4th 1211.

Social worker malpractice. 58 A.L.R.4th 977.

Am. Jur. 47 Am. Jur. 2d, Juv. Cts., § 1 et seq.

C.J.S. 43 C.J.S., Infants, § 12 et seq.

9-28-201. Legislative intent and purpose.

(a) The General Assembly recognizes that the state has a responsibility to provide its youth with appropriate services and programs to help decrease the number of juvenile offenders in the state and to create a better future for the state's youth and that reforms in the juvenile justice system require oversight by an organization with special expertise in the problems of juvenile offenders. Therefore, the General Assembly declares that this subchapter is necessary to create a single

entity within the Department of Human Services with primary responsibility for coordinating, sponsoring, and providing services to Arkansas's youth and to create a structure within state government that will be responsive to the needs of the state's youth.

(b) The purposes of this subchapter include without limitation to:

(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

(2) Reduce the number of secure out-of-home placements;

(3) Redirect funding from secure residential facilities to evidence-based community services; and

(4) Enhance treatment for youth committed to the Division of Youth Services.

History. Acts 1995, No. 1261, § 1; 2019, No. 189, § 5.

A.C.R.C. Notes. Acts 2019, No. 189, § 1, provided: "This act shall be known and may be cited as the 'Restoring Arkansas Families Act'."

Acts 2019, No. 189, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds:

"(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

"(2) Stakeholder groups represented on the board include:

"(A) Families and youth involved in the juvenile system;

"(B) The Department of Education;

"(C) The Department of Workforce Services;

"(D) The Department of Human Services;

"(E) Youth services providers;

"(F) Juvenile judges;

"(G) The Administrative Office of the Courts;

"(H) Prosecuting attorneys;

"(I) Public defenders;

"(J) Youth advocates; and

"(K) Experts in adolescent development; and

"(3) In 2017, the board worked with the Arkansas Supreme Court Commission on Children, Youth, and Families to identify concerns and priorities for legislative action.

"(b) The purpose of this act is to:

"(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

"(2) Reduce the number of secure out-of-home placements;

"(3) Redirect funding from secure residential facilities to evidence-based community services;

"(4) Equitably allocate services in and across each judicial district;

"(5) Enhance treatment for youth committed to the Division of Youth Services; and

"(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers."

Amendments. The 2019 amendment added (b) and designated the former section as (a).

CASE NOTES

Trial Court's Authority.

Trial court's order did not violate § 9-28-207 as it did not dictate placement but stated only that if the juvenile was going to be in the Department of Human Ser-

vices' custody, he had to receive treatment. Ark. Dep't of Human Servs. v. State, 2017 Ark. App. 137, 516 S.W.3d 743 (2017).

9-28-202. Creation of the Division of Youth Services — Director.

(a) There is hereby created the Division of Youth Services within the Department of Human Services.

(b)(1) The Governor may appoint the Director of the Division of Youth Services or may delegate that function to the Secretary of the Department of Human Services.

(2) The director shall report to the secretary.

History. Acts 1995, No. 1261, § 2; added (b)(2); and substituted “Secretary of the Department of Human Services” for 2019, No. 910, § 5135.

Amendments. The 2019 amendment “Director of the Department of Human Services” in (b)(1) and redesignated former (b) as (b)(1) and

9-28-203. Division of Youth Services — Powers and duties.

(a) The Division of Youth Services shall perform the following functions and have the authority and responsibility to:

(1) Coordinate communication among the various components of the juvenile justice system;

(2) Oversee reform of the state’s juvenile justice system, review the quality and consistency of reforms and reform proposals, and monitor youth and family outcomes related to reforms;

(3) Provide services to delinquent and families-in-need-of-services youths;

(4) Conduct research into the causes, nature, and treatment of juvenile delinquency and related problems;

(5) Develop programs for early intervention and prevention of juvenile delinquency;

(6) Maintain information files on juvenile delinquents in the state;

(7) Develop effective community-based alternatives to confinement, incarceration, and commitment of youths;

(8) Actively pursue the maximization of federal funding for juvenile delinquency and related programs;

(9) Evaluate the effectiveness and efficiency of the programs and services offered by the Division of Youth Services and recommend changes to the Governor;

(10) Provide a system of education in residential facilities operated by the Division of Youth Services that conforms to the guidelines established by the Division of Elementary and Secondary Education and as set forth in § 9-28-205;

(11) Develop a reinvestment plan to redirect savings realized from reductions in the number of secure out-of-home placements under § 9-28-1203;

(12) Develop a collaborative information-sharing system among the Department of Human Services, the Administrative Office of the Courts, and other stakeholders; and

(13) Do and perform all other actions and exercise all other authority not inconsistent with the provisions of this subchapter as necessary to carry out the purposes and intent of this subchapter.

(b) In addition to other duties enumerated in this subchapter, the Division of Youth Services shall provide services as follows:

(1) The Civilian Student Training Program shall provide services to youths that shall consist of, but not be limited to, school reintegration, counseling, tutoring, job placement counseling, corrective behavior skill counseling, and training;

(2)(A) Case management services shall include, but not be limited to:

- (i) Making placement recommendations to court authorities; and
- (ii) Arrangement, coordination, and monitoring of services for a juvenile.

(B) These services may be acquired by agreement with community providers, other agencies, or individuals as necessary;

(3)(A) Client-specific services shall consist of, but not be limited to:

- (i) Independent living, tracker, or proctor services;
- (ii) Family or individual therapy; and
- (iii) Individualized treatment or supportive care services.

(B) These services may be acquired by agreement with comprehensive community-based providers capable of delivering the required continuum of services;

(4)(A) Reduction-in-commitment services shall include services to address public safety, supervision, and rehabilitative needs of youths who may otherwise be detained, incarcerated, or committed to the Division of Youth Services.

(B) Reduction-in-commitment services may include without limitation:

- (i) Electronic monitoring;
- (ii) Family or individual therapy;
- (iii) Day treatment services;
- (iv) Residential or outpatient mental health counseling, sex offender counseling, or substance abuse counseling;
- (v) Parenting classes for youths or custodians;
- (vi) Respite care; and
- (vii) Emergency shelter services.

(C) These services may be acquired by agreement with comprehensive community-based providers capable of delivering the required continuum of services.

(D) The Division of Youth Services shall collect data regarding the effectiveness of these services and report semiannually to the Youth Justice Reform Board;

(5)(A) Serious offender programs for youths charged with violent offenses shall consist of appropriate residential treatment programs at any of the youth services centers or facilities.

(B) Serious offender programs or community-based programs may be acquired by agreements with entities or agencies deemed appropriate and capable of providing such services;

(6) Less restrictive community-based programs selected by the Director of the Division of Youth Services for youths not deemed at risk of performing violent offenses;

(7)(A) Observation and assessment services shall consist of, but not be limited to, those activities necessary to ensure appropriate recommendations for intervention, services, and placement of low-risk and medium-risk juveniles.

(B) Observation and assessment services may be acquired by agreements with community providers or other agencies or individuals deemed to have the appropriate level of expertise to perform observation and assessment or diagnosis and evaluation.

(C)(i) The Division of Youth Services shall use validated risk assessments for all juveniles committed to the Division of Youth Services.

(ii) The Division of Youth Services shall provide individualized treatment and placement decisions, with measureable goals and regular reassessments, based on the results of an initial assessment and the risk level assigned to the juvenile by the validated risk assessment used in the court's commitment decision under § 9-27-330(a)(1)(B);

(8)(A) Residential observation and assessment services shall consist of, but not be limited to, those activities necessary to ensure appropriate recommendations for intervention, services, and placement of high-risk juveniles.

(B) Residential observation and assessment services may be performed by or at appropriate state-operated facilities or by agreement with appropriate agencies or individuals deemed to have the appropriate level of expertise to perform residential observation and assessment or diagnosis and evaluation.

(C)(i) The Division of Youth Services shall use validated risk assessments for all juveniles committed to the Division of Youth Services.

(ii) The Division of Youth Services shall provide individualized treatment and placement decisions, with measurable goals and regular reassessments, based on the results of an initial assessment and the risk level assigned to the juvenile by the validated risk assessment used in the court's commitment decision under § 9-27-330(a)(1)(B);

(9)(A)(i) Community-based alternative basic services shall consist of, but not be limited to, prevention, intervention, casework, treatment, counseling, observation and assessment, case management, and residential services.

(ii) Community-based alternative basic services shall be provided through a treatment model that is evidence-based, developmentally appropriate, family-centered, strength-based, and trauma-informed.

(iii) Primary goals for community-based alternative basic services shall be the prevention of youths from entering the juvenile justice system and the provision of professional, community-based, least-cost services to youths.

(B) These services may be acquired by agreements with comprehensive community-based providers capable of delivering the required continuum of services;

(10)(A) Expanded services may consist of, but not be limited to:

- (i) Expansion of existing programs;
- (ii) Specific programs for alcohol, drug, or sex offenders;
- (iii) Special therapeutic treatment programs or client-specific services in which a consistent population has been defined as in need of multidiscipline care and services;
- (iv) Expansion of proven, effective, early intervention and prevention program activities; and
- (v) Restoration of previously proven effective interventions that prevent incarceration.

(B) Utilization of funds appropriated for expanded services shall be as directed by the director; and

(11) The Division of Youth Services shall provide monitoring and technical assistance to review the quality and consistency of reforms to the juvenile justice system.

(c) The Division of Youth Services shall pursue the maximization of federal funds to benefit the youth of Arkansas.

(d)(1) The Division of Youth Services shall promulgate rules as necessary to administer this subchapter.

(2) The rules shall be reviewed by the Senate Interim Committee on Children and Youth or any appropriate legislative committee during legislative sessions.

History. Acts 1995, No. 1261, § 3; 1997, No. 312, § 1; 2009, No. 972, § 1; 2015, No. 1010, § 2; 2019, No. 189, §§ 6-10; 2019, No. 910, § 2199.

A.C.R.C. Notes. Acts 2015, No. 1010, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) When effective community-based services are not available as an alternative to incarceration, the results are the secure confinement of youths who pose little or no threat to public safety;

"(2) When effective community-based alternatives are in place, use of confinement and commitments to the Division of Youth Services of the Department of Human Services can be reduced with no compromise of public safety; and

"(3) The state can realize significant fiscal savings, while positively impacting the lives of youthful offenders, by encouraging and investing in the use of effective community-based alternatives, and by reserving the use of state commitments and secure confinement for youthful offenders who pose a serious risk to public safety.

"(b) The purpose of this act is to establish a mandate for the provision of services to reduce youth incarceration, and to

provide oversight and accountability for the effectiveness of commitment reduction services to the state and to stakeholders in the juvenile justice system."

Acts 2019, No. 189, § 1, provided: "This act shall be known and may be cited as the 'Restoring Arkansas Families Act'."

Acts 2019, No. 189, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds:

"(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

"(2) Stakeholder groups represented on the board include:

"(A) Families and youth involved in the juvenile system;

"(B) The Department of Education;

"(C) The Department of Workforce Services;

"(D) The Department of Human Services;

"(E) Youth services providers;

"(F) Juvenile judges;

"(G) The Administrative Office of the Courts;

"(H) Prosecuting attorneys;

“(I) Public defenders;

“(J) Youth advocates; and

“(K) Experts in adolescent development; and

“(3) In 2017, the board worked with the Arkansas Supreme Court Commission on Children, Youth, and Families to identify concerns and priorities for legislative action.

“(b) The purpose of this act is to:

“(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

“(2) Reduce the number of secure out-of-home placements;

“(3) Redirect funding from secure residential facilities to evidence-based community services;

“(4) Equitably allocate services in and across each judicial district;

“(5) Enhance treatment for youth committed to the Division of Youth Services; and

“(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers.”

Amendments. The 2015 amendment inserted (a)(7) and (b)(4) and redesignated the remaining subdivisions accordingly;

substituted “comprehensive community-based providers capable of delivering the required continuum of services” for “community providers or other agencies or individuals deemed professionally capable of delivering the required services” in (b)(3)(B) and for “local community providers or other agencies or individuals deemed professionally capable and appropriate to deliver such services” in (b)(9)(B); and added (b)(10)(A)(v).

The 2019 amendment by No. 189 deleted “of the Department of Human Services” following “Division of Youth Services” in the introductory language of (a); added “review the quality and consistency of reforms and reform proposals, and monitor youth and family outcomes related to reforms” in (a)(2); inserted (a)(11) and (a)(12); redesignated former (a)(11) as (a)(13); added (b)(7)(C) and (b)(8)(C); inserted (b)(9)(A)(ii) and redesignated former (b)(9)(A)(ii) as (b)(9)(A)(iii); and added (b)(11).

The 2019 amendment by No. 910 substituted “Division of Youth Services” for “division” and “Division of Elementary and Secondary Education” for “Department of Education” in (a)(10).

Cross References. Private service contract notice required, § 25-10-136.

Private service contract performance evaluation requirement, § 25-10-137.

CASE NOTES

ANALYSIS

Tort Immunity.

Trial Court’s Authority.

Tort Immunity.

A juvenile rehabilitation camp housing juvenile offenders under this section, as a volunteer agency, was not entitled to immunity under the Arkansas Volunteer Immunity Act, § 16-6-101 et seq., nor entitled to charitable immunity under the common-law doctrine of charitable immu-

nity. *Ouachita Wilderness Inst. v. Mergen*, 329 Ark. 405, 947 S.W.2d 780 (1997).

Trial Court’s Authority.

Trial court’s order did not violate § 9-28-207 as it did not dictate placement but stated only that if the juvenile was going to be in the Department of Human Services’ custody, he had to receive treatment. *Ark. Dep’t of Human Servs. v. State*, 2017 Ark. App. 137, 516 S.W.3d 743 (2017).

9-28-204. Observation and assessment center.

(a) The Division of Youth Services shall establish and maintain an observation and assessment center for the reception, orientation, classification, and adjustment evaluation of all youths committed to the division.

(b)(1) The staff of the center shall be provided by the division or its designee.

(2) The staff shall consist of the professional and clerical personnel as are necessary to perform the functions of the center as provided in this section.

(c) The center shall be a secure facility and shall be equipped to hold committed youths for such period of time as necessary to provide for orientation, diagnosis, evaluation, and classification of a youth.

History. Acts 1995, No. 1261, § 4;
1995, No. 1335, § 4.

9-28-205. Youth services centers.

(a) The physical facilities and programs at each of the youth services centers shall be designed and developed to be particularly suitable for the physical custody, care, education, and rehabilitation of youths of particular classifications.

(b) In classifying and committing youths to the various centers and facilities, the Division of Youth Services shall take into consideration a youth's age, sex, physical condition, mental attitude and capacity, prognosis for rehabilitation, the seriousness of the committing offense, and such other criteria as the Division of Youth Services shall determine.

(c)(1)(A) The Division of Youth Services shall establish a system of education that shall conform to the guidelines established by the Division of Elementary and Secondary Education.

(B) The Division of Elementary and Secondary Education shall establish guidelines for the Division of Youth Services' system of education.

(C)(i) The Division of Youth Services, with the support and assistance of the Division of Elementary and Secondary Education, shall conduct an education program assessment of each Division of Youth Services facility and provide a written report of assessment findings to the Division of Youth Services.

(ii) The Division of Youth Services, with the support and assistance of the Division of Elementary and Secondary Education, shall submit a corrective action plan for each Division of Youth Services facility to the Director of the Division of Youth Services, if needed.

(iii) The Division of Elementary and Secondary Education shall monitor the Division of Youth Services' system of education to ensure that the guidelines established by the Division of Elementary and Secondary Education are satisfied by the Division of Youth Services' system of education.

(2) A student enrolled in the Division of Youth Services' system of education shall receive credit for courses that meet the guidelines established by the Division of Elementary and Secondary Education.

(3) Course credits and promotions received by a student enrolled in the Division of Youth Services' system of education shall be considered

transferable in the same manner as those course credits and promotions from other educational entities.

(4)(A) A student's home school district or the school district in which the Division of Youth Services facility is located may issue a diploma for a student who successfully completes the graduation requirements of the school district.

(B) If neither a student's home school district nor the school district in which the Division of Youth Services facility is located is able to issue a diploma, then the Department of Human Services is authorized to issue a diploma to a student who successfully completes the requirements of the Division of Youth Services' system of education.

(5) The Division of Youth Services is authorized to contract for services, or hire staff, teachers, and other personnel as necessary to carry out the provisions of this section subject to the following requirements:

(A) A teacher employed in the Division of Youth Services' system of education shall hold a valid Arkansas teacher's license in the appropriate area of instruction, unless the teacher participates in an additional licensure plan for the appropriate area of instruction at the time of employment;

(B) Staff, teachers, and other personnel employed by the Division of Youth Services' system of education shall be eligible for membership in the Arkansas Teacher Retirement System and shall earn credited service for employment; and

(C) The Division of Youth Services' system of education shall compensate teachers in accordance with the minimum teacher salary schedule set forth in § 6-17-2403.

(d) The Division of Youth Services, the Division of Elementary and Secondary Education, and the Division of Career and Technical Education shall work collaboratively to prepare courses of study for the Division of Youth Services' system of education, including courses in career and technical education suited to the age and capacity of the youths.

(e) The Department of Human Services, the Division of Elementary and Secondary Education, and the Division of Career and Technical Education may promulgate rules as necessary to administer the requirements of this section.

(f) The Department of Human Services and the Division of Elementary and Secondary Education shall report annually, beginning on March 1, 2010, to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and to the Senate Interim Committee on Children and Youth on the state of the Division of Youth Services' system of education.

History. Acts 1995, No. 1261, § 5; 2009, No. 956, § 28; 2009, No. 972, § 2; 2019, No. 910, §§ 2200, 2201.

Amendments. The 2019 amendment

substituted "Division of Youth Services" for "division" throughout (c)(1), (c)(2), (d), and (f); substituted "Division of Elementary and Secondary Education" for "De-

partment of Education” throughout (c)(1), (c)(2), (d), (e), and (f); deleted “no later than July 1, 2009” from the end of (c)(1)(B); deleted “no later than December 1, 2009” from the end of (c)(1)(C)(i) and (ii); and substituted “Division of Career and Technical Education” for “Department of Career Education” in (d) and (e).

9-28-206. Disposition of delinquent juvenile.

- (a) When a circuit court or any other court having jurisdiction of a juvenile under eighteen (18) years of age finds a juvenile to be delinquent as defined by the laws of this state, the court may commit the juvenile to the Division of Youth Services for an indeterminate period not to exceed the twenty-first birthday of the juvenile.
- (b) No court may commit a juvenile found solely in criminal contempt to the division.

History. Acts 1995, No. 1261, § 6; 1999, No. 1192, § 21; 2005, No. 192, § 1.

9-28-207. Commitment to the Division of Youth Services.

- (a) When any youth is committed to the Division of Youth Services as authorized in this section, the youth shall be under the exclusive care, physical custody, and control of the division from the time of the lawful reception of the youth by a youth services center until the youth is released from the physical custody of the division.
- (b) The fact that a youth has been committed to the division shall not be received in evidence in any court in this state in any subsequent proceeding affecting the youth, except as otherwise provided by law.

History. Acts 1995, No. 1261, § 7; 2009, No. 956, § 29.

CASE NOTES

ANALYSIS

Serious Offender Program.
Trial Court Did Not Exceed Authority.

Serious Offender Program.
Chancellor lacked authority to order commitment of a juvenile offender to a serious offender program within the youth services center. Ark. Dep’t of Human Servs. v. State, 319 Ark. 749, 894 S.W.2d 592 (1995).

Trial Court Did Not Exceed Authority.
Trial court’s order did not violate this section as it did not dictate placement but stated only that if the juvenile was going to be in the Department of Human Services’ custody, he had to receive treatment. Ark. Dep’t of Human Servs. v. State, 2017 Ark. App. 137, 516 S.W.3d 743 (2017).

9-28-208. Order of commitment.

- (a)(1) An order of commitment to the Division of Youth Services shall state that the juvenile is found to be delinquent and shall state information regarding the underlying facts of the adjudication.
- (2) No circuit court may commit a juvenile found solely in criminal contempt to the Division of Youth Services.

(3) All healthcare providers shall transmit to the Division of Youth Services all medical and health information on the committed juvenile within three (3) days from the request of the Division of Youth Services, including individually identifiable health information needed for the Division of Youth Services to assume the role of caretaker for the committed juvenile.

(4) The committed juvenile's school or current educational setting shall transmit the education record, as defined by rule of the Division of Elementary and Secondary Education, to the Division of Youth Services within ten (10) school days from the request from the Division of Youth Services.

(b)(1) Upon entry of an order of detention and commitment to a youth services center pursuant to § 9-27-330 or § 9-27-509, a court shall transmit to the Division of Youth Services:

- (A) A copy of the commitment order;
- (B) A copy of the validated risk assessment instrument; and
- (C) Records or information pertaining to the juvenile compiled by the intake officer or juvenile probation officer that shall include:
 - (i) Information on the juvenile's background, history, behavioral tendencies, and family status;
 - (ii) The reasons for the juvenile's commitment;
 - (iii) The name of the school in which the juvenile is currently or was last enrolled;
 - (iv) The juvenile's offense history;
 - (v) The juvenile's placement history;
 - (vi) A copy of all psychological or psychiatric evaluations or examinations performed on the juvenile admitted into evidence or ordered by the court while under the jurisdiction of the court or the supervision of the court staff;
 - (vii) A comprehensive list of all current medications taken by the juvenile; and
 - (viii) A comprehensive list of all medical treatment currently being provided to the juvenile.

(2) The records or information specified in subdivision (b)(1) of this section shall be delivered to the Division of Youth Services prior to or at the time the juvenile is transported to a youth services center.

(3) Information relating to the committing offense is exclusively for the benefit of the Division of Youth Services and shall not be disclosed by Division of Youth Services officials or employees without written authorization of the committing court, except for data and statistical compilations as otherwise provided by law.

(c) Except when an extended juvenile jurisdiction offender is committed to the Division of Youth Services, an order of commitment shall remain in effect for an indeterminate period not exceeding two (2) years, subject to extension by the committing court for additional periods of one (1) year if the court finds an extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(d) Commitment shall not exceed the twenty-first birthday of a juvenile.

(e) When an order of commitment includes recommendations for a specific type of placement, the Division of Youth Services shall consider those recommendations in making a placement.

History. Acts 1995, No. 1261, § 8; 1999, No. 1192, § 22; 2005, No. 192, § 2; 2005, No. 1820, § 1; 2019, No. 189, § 11; 2019, No. 910, § 2202.

A.C.R.C. Notes. Acts 2019, No. 189, § 1, provided: “This act shall be known and may be cited as the ‘Restoring Arkansas Families Act’.”

Acts 2019, No. 189, § 2, provided: “Legislative findings and intent.

“(a) The General Assembly finds:

“(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

“(2) Stakeholder groups represented on the board include:

“(A) Families and youth involved in the juvenile system;

“(B) The Department of Education;

“(C) The Department of Workforce Services;

“(D) The Department of Human Services;

“(E) Youth services providers;

“(F) Juvenile judges;

“(G) The Administrative Office of the Courts;

“(H) Prosecuting attorneys;

“(I) Public defenders;

“(J) Youth advocates; and

“(K) Experts in adolescent development; and

“(3) In 2017, the board worked with the Arkansas Supreme Court Commission on Children, Youth, and Families to identify concerns and priorities for legislative action.

“(b) The purpose of this act is to:

“(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

“(2) Reduce the number of secure out-of-home placements;

“(3) Redirect funding from secure residential facilities to evidence-based community services;

“(4) Equitably allocate services in and across each judicial district;

“(5) Enhance treatment for youth committed to the Division of Youth Services; and

“(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers.”

Amendments. The 2019 amendment by No. 189 inserted “validated” in (b)(1)(B).

The 2019 amendment by No. 910, in (a)(4), substituted “Division of Elementary and Secondary Education” for “Department of Education” and substituted “Division of Youth Services” for “division” twice.

CASE NOTES

ANALYSIS

Construction.
Applicability.
Age.

Construction.

Even though this section was amended to extend commitment time for juveniles beyond age 18 under certain circumstances, the section presupposes that the youth has already been committed at the time he or she turns 18 and allows for that commitment to continue. *Hansen v. State*, 323 Ark. 407, 914 S.W.2d 737 (1996).

Juvenile’s argument that trial court’s commitment order was invalid on its face failed because the trial court’s finding that the commitment was based upon a finding of criminal contempt and violation of the Division of Youth Services aftercare plan satisfied the requirements of subsection (a) of this section; criminal contempt was a crime in the ordinary sense. *Ark. Dep’t of Human Servs. v. Mainard*, 358 Ark. 204, 188 S.W.3d 901 (2004).

Applicability.

Subsection (d) of this section cannot be invoked unless the juvenile is currently

committed to the Office of Youth Services. *Wright v. State*, 331 Ark. 173, 959 S.W.2d 50 (1998).

Age.

Motion to transfer to juvenile court denied in part because defendant was 17 years old. *Sanders v. State*, 326 Ark. 415, 932 S.W.2d 315 (1996).

The fact that juveniles cannot be committed to the Division of Youth Services for rehabilitation unless they are already committed at the time they turn 18 is highly relevant to a 17-year-old juvenile's prospects for rehabilitation, and is an important factor in determining a motion to transfer. *Maddox v. State*, 326 Ark. 515, 931 S.W.2d 438 (1996).

Motion to transfer to juvenile court was

properly denied where defendant was charged with serious felonies, was presently 19 years old, and had virtually no juvenile services available to him. *Majesty v. State*, 330 Ark. 416, 954 S.W.2d 245 (1997).

Young people over the age of 18 can no longer be committed to the Division of Youth Services for rehabilitation unless they are already committed at the time they turn 18. *Brown v. State*, 330 Ark. 518, 954 S.W.2d 276 (1997).

Cited: *Brooks v. State*, 326 Ark. 201, 929 S.W.2d 160 (1996); *McClure v. State*, 328 Ark. 35, 942 S.W.2d 243 (1997); *Jensen v. State*, 328 Ark. 349, 944 S.W.2d 820 (1997); *Smith v. State*, 328 Ark. 736, 946 S.W.2d 667 (1997); *Jones v. State*, 332 Ark. 617, 967 S.W.2d 559 (1998).

9-28-209. Commitment conditions and terms.

(a)(1) Upon commitment to the Division of Youth Services, a youth shall be delivered to the observation and assessment center for orientation, classification, diagnosis, and evaluation.

(2) Upon completion of such orientation, classification, diagnosis, and evaluation, the staff of the observation and assessment center shall make recommendations to the Director of the Division of Youth Services with respect to the placement of a youth.

(b) Upon receipt of the recommendations, the director shall determine whether a youth shall be placed in a youth services center or facility or any program operated by the Department of Human Services.

(c)(1) If the division determines that a youth shall be retained in any of the facilities or programs, it shall consider the youth's physical condition, mental attitude and capacity, prognosis for successful rehabilitation, and such other criteria as the division shall establish in order to place the youth in the most appropriate facility or program as determined by the division.

(2) If the division determines that a youth is not suited for placement in a youth services center or facility, it shall report its findings to the committing court along with information regarding the placement of the youth.

(d) The division has the authority to move a youth at any time within its system of youth services centers or facilities and community-based programs or within the department's programs or facilities.

History. Acts 1995, No. 1261, § 9; 1995, No. 1335, § 5.

CASE NOTES

ANALYSIS

Age of Defendant.
Serious Offender Program.

Age of Defendant.

Where defendant was 16 at the time the offense was committed, but would have reached the age of 18 by the time he was convicted, he could not then have been committed to a youth services center on conviction, and therefore a transfer of his case to juvenile court was unwarranted. *Sims v. State*, 320 Ark. 528, 900 S.W.2d 508 (1995), overruled, *MacKintrush v.*

State, 334 Ark. 390, 978 S.W.2d 293 (1998).

Serious Offender Program.

Chancellor lacked authority to order commitment of a juvenile offender to a serious offender program within the youth services center. *Ark. Dep't of Human Servs. v. State*, 319 Ark. 749, 894 S.W.2d 592 (1995).

Cited: *Bright v. State*, 307 Ark. 250, 819 S.W.2d 7 (1991); *Wicker v. State*, 310 Ark. 580, 839 S.W.2d 186 (1992); *Troutt Bros. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992); *Myers v. State*, 317 Ark. 70, 876 S.W.2d 246 (1994).

9-28-210. Release.

(a)(1) In consideration of its juvenile correctional role, the Division of Youth Services shall establish objective guidelines for length of stay when juveniles are committed to the division.

(2) Except when an extended juvenile jurisdiction offender or a juvenile committed to the division from circuit court is committed to the division, length-of-stay determinations shall be the exclusive responsibility of the division, and committed juveniles shall be reintegrated into society at a pace determined by the seriousness of the committing offense, aggravating or mitigating circumstances, community compatibility, and clinical prognosis.

(3) When an extended juvenile jurisdiction offender has been committed to the division, the committing court shall have sole release authority.

(4)(A) Upon determination that the juvenile has been rehabilitated, the division may petition the court for release.

(B) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

(i) The experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;

(ii) The nature of the offense or offenses and the manner in which they were committed;

(iii) The recommendations of the professionals who have worked with the juvenile;

(iv) The protection of public safety; and

(v) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

(5) The court shall release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.

(b) The division shall establish policies regarding the eligibility of juveniles for release consideration.

(c)(1) Whenever the Director of the Division of Youth Services, upon examination of all information and recommendations provided, shall determine that release of a juvenile is in the interest of both the state and the juvenile, the division shall grant release or petition the committing court for release if the juvenile is an extended juvenile jurisdiction offender.

(2) Except when an extended jurisdiction offender is committed to the division, release decisions shall be made by the director without the necessity of an application by or on behalf of a juvenile.

(3) In determining whether the release of a juvenile is in the best interest of both the state and the juvenile, the division shall consider the circumstances of the committing offense, any recommendations of the committing judge, any recommendations of the probation officer of the committing court, the juvenile's previous delinquency record, the availability of community programs, and the stability of the juvenile's home environment.

(d)(1) The committing court may recommend at any time that a juvenile be released from the custody of the division.

(2) A recommendation for release shall be provided in writing to the division stating the reasons release is deemed in the best interest of the juvenile and society.

(3) Except when an extended juvenile jurisdiction offender is committed to the division, a final decision to release shall be made by the division.

(e) Upon release from the custody of the division, a juvenile shall remain under the jurisdiction of the committing court for an indeterminate period not to exceed two (2) years, except when an extended juvenile jurisdiction offender is committed to the division.

History. Acts 1995, No. 1261, § 10;
1999, No. 1192, § 23.

9-28-211. Escape from youth services center or facilities.

(a) If any delinquent youth committed to the Division of Youth Services escapes or absents himself or herself from a youth services center or facility without authorization, he or she may be returned to the facility by a law enforcement officer without further proceedings.

(b) No law enforcement officer, Department of Human Services State Institutional System Board member, division employee, or other person shall be subject to suit or held criminally or civilly liable for his or her actions provided he or she acts in good faith and without malice in the apprehension and return of escapees.

History. Acts 1995, No. 1261, § 11.

9-28-212. Sale of goods produced at youth services centers — Disposition of funds.

All funds derived from the sale of agricultural products, livestock, or manufactured articles, or from other activities carried on at the youth services centers or facilities shall be deposited into the State Treasury in the Youth Services Fund Account of the Department of Human Services Fund to be used exclusively for the support of the Division of Youth Services.

History. Acts 1995, No. 1261, § 12.

CASE NOTES

Cited: Ouachita Wilderness Inst. v. Mergen, 329 Ark. 405, 947 S.W.2d 780 (1997).

9-28-213. [Repealed.]

Publisher's Notes. This section, concerning the penalty for escape as enacted by Acts 1997, No. 1229, was repealed by

Acts 1999, No. 1508, § 7. The section was derived from Acts 1997, No. 1229, § 8.

9-28-214. Penalty for escape.

(a) If charged and found guilty as an adult for first degree escape, § 5-54-110, or second degree escape, § 5-54-111, a juvenile shall be given a mandatory sentence of not less than nine (9) months in an appropriate facility of the Division of Correction.

(b) If adjudicated delinquent for first degree escape, § 5-54-110, or second degree escape, § 5-54-111, a juvenile shall be committed to the Division of Youth Services and placed in a more restricted facility in order to complete the remaining term of his or her commitment, provided that if the juvenile escaped from the most restricted facility, the juvenile shall complete the remaining term of his or her commitment at that or a similar facility.

(c) The juvenile may receive credit for time served.

History. Acts 1997, No. 1299, § 8; substituted "Division of Correction" for 2019, No. 910, § 692.

Amendments. The 2019 amendment

"Department of Correction" in (a).

9-28-215. Departure without authorization — Release of information — Definition.

(a) As used in this section, "identifying and descriptive information" means any information pertaining to a juvenile that is necessary to safeguard public safety and aid in the apprehension of the juvenile, including without limitation:

- (1) A photo of the juvenile;
- (2) The name of the juvenile;

(3) The age of the juvenile; and

(4) A felony offense for which the juvenile is committed to the custody of the Division of Youth Services.

(b)(1) When a juvenile who is committed to the custody of the Division of Youth Services leaves his or her assigned placement without authorization, the Director of the Division of Youth Services or his or her designee shall release the identifying and descriptive information of the juvenile to the general public if the juvenile:

(A) Is committed to the Division of Youth Services for an offense that would be a felony if the offense were committed by an adult;

(B) Poses a serious threat to public safety or a member of the public; or

(C) Is at a heightened risk of harm if he or she is not apprehended immediately due to his or her age, disability, medical condition, mental capacity, or another emergency circumstance.

(2) The Division of Youth Services shall release identifying and descriptive information to the general public if the juvenile is committed to the Division of Youth Services under extended juvenile jurisdiction.

(3) The Division of Youth Services shall promulgate rules detailing the factors to be considered in determining when identifying and descriptive information may be released.

(c) When a juvenile departs without authorization from the Arkansas State Hospital, if at the time of departure the juvenile is committed as a result of an acquittal, for mental disease or defect, of an offense for which the juvenile could have been tried as an adult, the Director of the Division of Aging, Adult, and Behavioral Health Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information he or she deems necessary to aid in the apprehension of the juvenile and safeguard the public welfare.

(d) When a juvenile departs without authorization from a local juvenile detention facility, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the director of the juvenile detention facility shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and safeguard the public welfare.

History. Acts 1997, No. 397, § 1; 2019, No. 365, § 1.

Amendments. The 2019 amendment rewrote (a); inserted (b); and redesignated former (b) and (c) as (c) and (d).

Cross References. Disposition of juvenile offenders, § 9-27-330.

9-28-216. Separation of juvenile offenders — Rules — Review.

(a) The Division of Youth Services shall promulgate rules to require the separation of juvenile offenders committed to a facility operated by the division based upon:

- (1) The age of the juvenile offender;
- (2) The seriousness of the crime or crimes committed by the juvenile offender; or
- (3) Whether the juvenile offender has been adjudicated delinquent of a sex offense as defined under § 12-12-903.

(b) No rule pertaining to the separation of juvenile offenders promulgated hereafter by the division shall be effective until reviewed by the Legislative Council, the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and the Senate Interim Committee on Children and Youth, or appropriate subcommittees thereof, of the General Assembly.

History. Acts 1999, No. 1030, § 1; substituted “rules” for “regulations” in the 2019, No. 315, § 721. section heading and in (a); and substituted “rule” for “regulation” in (b).

Amendments. The 2019 amendment

9-28-217. Juvenile records confidentiality.

(a) Except as provided in subsection (c) of this section, reports, correspondence, memoranda, case histories, or other material that personally identifies a juvenile, including protected health information, compiled or received by a juvenile detention facility, a community-based provider for the Division of Youth Services, or the Division of Youth Services shall be confidential and shall not be released or otherwise made available except to the following persons or entities and to the extent permitted by federal law:

- (1) The juvenile;
- (2) The juvenile’s parent, guardian, or custodian;
- (3) The juvenile division of circuit court and court staff;
- (4) The ombudsman of youth committed to the Division of Youth Services;

- (5) The attorney for the juvenile;
- (6) The attorney ad litem for the juvenile;

(7) A grand jury or a court upon a finding that information in the juvenile’s record is necessary for the determination of an issue before the court or the grand jury;

(8)(A) Individual federal and state representatives and senators and their staff members in their official capacity.

(B) However, no disclosure shall be made to any committee or legislative body of any information that identifies any recipient of services by name or address unless the juvenile, the juvenile’s attorney, and the juvenile’s parent, guardian, or custodian agree in writing to waive confidentiality and permit disclosure to the committee or legislative body;

(9) Law enforcement or the prosecuting attorney;

(10) Service providers, including healthcare providers, to assist in the care, evaluation, examination, or treatment of the juvenile;

(11) A governmental agency for an audit or similar activity conducted in connection with the administration of any plan or program if the governmental agency is authorized by law to conduct the audit or activity;

(12) A court-appointed special advocate upon presentation of an order of appointment;

(13) A federal program or federally assisted program that provides assistance, in cash or in kind, or services directly to individuals on the basis of need;

(14) A federal, state, or local government entity or any agent of the entity having a need for the information in order to carry out its responsibilities under law to serve or protect a juvenile delinquent or a juvenile who is a member of a family in need of services;

(15) Any licensing or registering authority may access to the extent necessary to carry out its official responsibilities;

(16) A multidisciplinary team coordinating a child maltreatment investigation under the Child Maltreatment Act, § 12-18-101 et seq., pertaining to the juvenile;

(17) The general public about any juvenile fatality if the death occurred when the Division of Youth Services, a detention center, or a community-based provider had responsibility for placement and care of the juvenile; and

(18)(A) A person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division of Youth Services to have value for the evaluation or development of policies to advance juvenile justice.

(B) Any confidential information provided by the Department of Human Services for a research or evaluation project in subdivision (a)(18)(A) of this section shall not be redisclosed or published.

(b)(1) Any person or agency to whom disclosure is made shall not disclose to any other person not identified in subsection (a) of this section a report or other information obtained pursuant to this section.

(2) Nothing in this subsection shall be construed to prevent subsequent disclosure by the parent, guardian, or custodian, or the juvenile or the juvenile's attorney.

(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(c) No information pertaining to a juvenile shall be released by a juvenile detention facility, a community-based provider for the Division of Youth Services, or the Division of Youth Services after the juvenile reaches eighteen (18) years of age unless:

(1) The juvenile remains in the custody of the Division of Youth Services;

(2) The juvenile consents; or

(3) An order requiring release of the information is entered by a court or a grand jury.

History. Acts 2007, No. 742, § 1; 2009, No. 758, § 15; 2016 (3rd Ex. Sess.), No. 16, § 1; 2016 (3rd Ex. Sess.), No. 17, § 1.

Amendments. The 2016 (3rd Ex. Sess.) amendment by identical acts Nos. 16 and 17 added (a)(18).

SUBCHAPTER 3 — RANDOM HEALTH INSPECTIONS OF DIVISION OF YOUTH SERVICES FACILITIES

SECTION.

9-28-301. Inspections — Timing — Report — Audit.

SECTION.

9-28-302. Security inspections.

Publisher’s Notes. Former subchapter 3, concerning juveniles in need of supervision, was repealed by Acts 1989, No. 273, § 47. The former subchapter was derived from the following sources:

- 9-28-301. Acts 1977, No. 509, § 1; A.S.A. 1947, § 45-601.
- 9-28-302. Acts 1977, No. 509, § 2; A.S.A. 1947, § 45-602.
- 9-28-303. Acts 1977, No. 509, § 3; A.S.A. 1947, § 45-603.
- 9-28-304. Acts 1977, No. 509, § 4; A.S.A. 1947, § 45-604.
- 9-28-305. Acts 1977, No. 509, § 5; A.S.A. 1947, § 45-605.
- 9-28-306. Acts 1977, No. 509, § 6; A.S.A. 1947, § 45-606.

For present provisions regarding juveniles in need of supervision, see generally § 9-27-301 et seq.

Effective Dates. Acts 2019, No. 189, § 15; July 1, 2020.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is

found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

9-28-301. Inspections — Timing — Report — Audit.

(a) In order to assure that juveniles committed to facilities operated by or under contract with the Division of Youth Services are not subject to unsafe and unsanitary living conditions, the Secretary of the Department of Human Services or a duly authorized agent is authorized to enter the controlled premises and conduct random and unannounced health inspections of the facilities.

(b)(1) Inspections shall include, but shall not be limited to, compliance with:

- (A) Rules pertaining to general sanitation;
- (B) Rules pertaining to retail food establishments;
- (C) The Arkansas Mechanical Code of the Department of Health;
- (D) The Arkansas Plumbing Code and the Arkansas Natural Gas Code of the Department of Health;
- (E) Rules of the Arkansas State Board of Pharmacy; and

(F) Rules pertaining to controlled substances.

(2) If the youth services facility is not accredited by the Commission on Accreditation for Corrections, the inspection shall also include compliance with the health and safety standards contained in the applicable American Correctional Association standards manual, as in effect on January 1, 2005.

(c) The inspections, while random, shall be performed at least two (2) times per calendar year with specific follow-up inspections by the Department of Health to monitor deficiencies and corrections as determined by the Department of Health.

(d) The Department of Human Services shall adopt the standards in effect on January 1, 2005, published by the American Correctional Association in cooperation with the Commission on Accreditation for Corrections as it relates to health concerns.

(e)(1) The Secretary of the Department of Health shall present a list of findings of the random health inspections to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within one (1) month after completing the random health inspections.

(2)(A) In the event the General Assembly is in session, the Secretary of the Department of Health shall provide the report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Interim Committee on Children and Youth.

(B) The complete report, including, but not limited to, statistics shall be made available to the public.

(f)(1) The Secretary of the Department of Human Services or the division shall file the report, along with a response not to exceed two (2) pages, to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within thirty (30) days after receiving an inspection report prepared by the Department of Health.

(2) In the event the General Assembly is in session, the Secretary of the Department of Human Services shall provide the response to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Interim Committee on Children and Youth.

(3) The response shall include a plan of correction and suggest a means by which the Department of Human Services or the division will correct any deficiencies within thirty (30) days of the filing of the report or within the time frame determined by the Department of Health to ensure the health and safety of the juveniles housed at the facility.

(g)(1) The Department of Human Services or the division shall develop an internal audit and review to evaluate and monitor all facilities of the division.

(2) The Department of Health will cooperate in training or assisting the Department of Human Services or the division in developing the process as it relates to health concerns.

(3) Included in its quarterly performance reports, the Department of Human Services or the division shall report on its progress to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(4) In the event the General Assembly is in session, the Secretary of the Department of Human Services shall provide the report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Interim Committee on Children and Youth.

(h) The Secretary of the Department of Human Services shall be required to close any facility when deficiencies are deemed by the Department of Health to be a danger to the health or safety of juveniles housed at such a facility.

(i) The Department of Human Services shall reimburse all expenses and costs to the Department of Health necessary to carry out the provisions of this subchapter.

(j) Those facilities operated under contract with the division that are required by another provision of state or federal law to be inspected shall not be subject to the provisions of this subchapter.

History. Acts 1999, No. 770, § 1; 2005, No. 1186, § 1; 2019, No. 910, §§ 5136-5139.

A.C.R.C. Notes. As enacted, subsection (d) began: “On or before the effective date of this act”.

As enacted, subdivision (g)(1) ended: “by January 1, 2000.”

Amendments. The 2019 amendment substituted “Secretary of the Department of Human Services” for “Director of the Department of Human Services” in (a), (f)(1), (f)(2), (g)(4), and (h); and substituted “Secretary of the Department of Health” for “Director of the Department of Health” in (e)(1) and (e)(2)(A).

9-28-302. Security inspections.

(a)(1) In order to assure that citizens of the State of Arkansas, the juveniles committed to facilities operated by or under contract with the Division of Youth Services, and the employees of the facilities are protected from injury and harm, the Secretary of the Department of Corrections or a duly authorized agent is authorized to enter the controlled premises and conduct random and unannounced security inspections of the facilities.

(2) The inspection shall include, but is not limited to, a review of:

(A) The security measures in place to prevent escapes by the juveniles;

(B) The security measures in place to prevent unauthorized persons from entering the facilities; and

(C) The use of force by employees of the facilities.

(b) Inspections shall include, but shall not be limited to, those standards as provided for in the current Standards for Juvenile Training Schools published by the American Correctional Association in cooperation with the Commission on Accreditation for Corrections.

(c) The inspections, while random, shall be performed at least one (1) time per calendar year with specific follow-up inspections by the

Department of Corrections to monitor deficiencies and corrections as determined by the Department of Corrections.

(d) On or before July 30, 1999, the Department of Human Services shall adopt the current Standards for Juvenile Training Schools published by the American Correctional Association in cooperation with the Commission on Accreditation for Corrections as it relates to safety concerns.

(e)(1) The Secretary of the Department of Corrections shall present a list of findings of the random security inspections to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within one (1) month after conducting the random security inspections.

(2) In the event the General Assembly is in session, the Secretary of the Department of Corrections shall provide the report to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Interim Committee on Children and Youth.

(3) The complete report including, but not limited to, statistics shall be made available to the public.

(f)(1) The Secretary of the Department of Human Services or the division shall file the report, along with a response not to exceed two (2) pages, to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth within thirty (30) days of receiving an inspection report prepared by the Department of Corrections.

(2) In the event the General Assembly is in session, the Secretary of the Department of Human Services shall provide the response to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Interim Committee on Children and Youth.

(3) The response shall include a plan of correction and suggest a means by which the Department of Human Services or the division will correct any deficiencies within thirty (30) days of the filing of the report or within the time frame determined by the Department of Corrections to ensure the health and safety of the juveniles housed at the facility.

(g)(1)(A) The Department of Human Services or the division shall develop an internal audit and review to evaluate and monitor all facilities of the division.

(B) The internal audit and review shall include without limitation monitoring of all facilities for security concerns.

(2) The Department of Corrections will cooperate in training or assisting the Department of Human Services or the division in developing this process as it relates to security concerns.

(3)(A) In its quarterly performance reports, the Department of Human Services or the division shall report on its progress to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth.

(B) In the event the General Assembly is in session, the Secretary of the Department of Human Services shall provide the report to the

House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Chair of the Senate Interim Committee on Children and Youth.

(h) The Secretary of the Department of Human Services shall be required to close any facility when deficiencies are deemed by the Department of Corrections to be a danger to the health or safety of juveniles housed at such facility.

(i) The Department of Human Services shall reimburse all expenses and costs to the Department of Corrections necessary to carry out the provisions of this subchapter.

(j) Those facilities operated under contract with the division that are required to be inspected by another provision of state or federal law shall not be subject to the provisions of this subchapter.

History. Acts 1999, No. 770, § 2; 2019, No. 189, § 12; 2019, No. 910, §§ 5140-5142.

A.C.R.C. Notes. As enacted, subsection (g)(1) ended: "by January 1, 2000."

Acts 2019, No. 189, § 1, provided: "This act shall be known and may be cited as the 'Restoring Arkansas Families Act'."

Acts 2019, No. 189, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds:

"(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

"(2) Stakeholder groups represented on the board include:

"(A) Families and youth involved in the juvenile system;

"(B) The Department of Education;

"(C) The Department of Workforce Services;

"(D) The Department of Human Services;

"(E) Youth services providers;

"(F) Juvenile judges;

"(G) The Administrative Office of the Courts;

"(H) Prosecuting attorneys;

"(I) Public defenders;

"(J) Youth advocates; and

"(K) Experts in adolescent development; and

"(3) In 2017, the board worked with the Arkansas Supreme Court Commission on Children, Youth, and Families to identify concerns and priorities for legislative action.

"(b) The purpose of this act is to:

"(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

"(2) Reduce the number of secure out-of-home placements;

"(3) Redirect funding from secure residential facilities to evidence-based community services;

"(4) Equitably allocate services in and across each judicial district;

"(5) Enhance treatment for youth committed to the Division of Youth Services; and

"(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers."

Amendments. The 2019 amendment by No. 189 added (g)(1)(B) and redesignated former (g)(1) as (g)(1)(A).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" throughout (f), (g), and (h); and substituted "Department of Corrections" for "Department of Correction" in (h).

SUBCHAPTER 4 — CHILD WELFARE AGENCY LICENSING ACT

SECTION.

- 9-28-401. Short title.
- 9-28-402. Definitions.
- 9-28-403. Child Welfare Agency Review Board — Creation — Authority.
- 9-28-404. Child Welfare Agency Review Board — Composition.
- 9-28-405. Child Welfare Agency Review Board — Duties.
- 9-28-406. Department enforcement duties.

SECTION.

- 9-28-407. Licenses required and issued.
- 9-28-408. Church-related exemption — Definition.
- 9-28-409. Criminal record and child maltreatment checks.
- 9-28-410. Voluntary respite care agreement — Exemption and penalties.
- 9-28-411 — 9-28-414. [Repealed.]
- 9-28-415. Foster home — Care requirements and limitations.

A.C.R.C. Notes. Pursuant to § 1-2-207, the amendments of § 9-28-406 by Acts 1997, Nos. 179 and 250 were superseded by the repeal of this subchapter by Acts 1997, No. 1041; and the amendment of § 9-28-411 by Acts 1997, No. 1234 was deemed to be superseded by the repeal by Acts 1997, No. 1041.

Publisher's Notes. As to jurisdiction of the circuit court over certain proceedings, see § 9-27-306.

Former subchapter 4, the Child Placement Agency Licensing Act, was repealed by Acts 1997, No. 1041, § 12. The former subchapter was derived from the following sources:

- 9-28-401. Acts 1983, No. 389, § 1; A.S.A. 1947, § 83-1209.
- 9-28-402. Acts 1983, No. 389, §§ 2, 7; 1985, No. 880, § 2; A.S.A. 1947, §§ 83-1210, 83-1215.
- 9-28-403. Acts 1983, No. 389, §§ 4, 7; 1985, No. 880, § 2; A.S.A. 1947, §§ 83-1212, 83-1215.
- 9-28-404. Acts 1983, No. 389, § 13; A.S.A. 1947, § 83-1221; Acts 1991, No. 761, § 1.
- 9-28-405. Acts 1983, No. 389, § 12; A.S.A. 1947, § 83-1220.
- 9-28-406. Acts 1983, No. 389, § 11; A.S.A. 1947, § 83-1219; Acts 1997, No. 179, § 7; 1997, No. 250, § 53.
- 9-28-407. Acts 1983, No. 389, § 9; A.S.A. 1947, § 83-1217.
- 9-28-408. This section was previously repealed by Acts 1991, No. 761, § 4. The section was derived from Acts 1983, No. 389, § 3; A.S.A. 1947, § 83-1211.
- 9-28-409. Acts 1983, No. 389, §§ 5-7; 1985, No. 880, §§ 1, 2; A.S.A. 1947, §§ 83-1213 — 83-1215; Acts 1991, No. 628, § 1.

9-28-410. Acts 1983, No. 389, § 8; 1985, No. 880, § 3; A.S.A. 1947, § 83-1216.

9-28-411. Acts 1983, No. 389, § 10; A.S.A. 1947, § 83-1218; Acts 1997, No. 1234, § 2.

9-28-412. Acts 1989, No. 941, § 1.

Cross References. Adoption in general, § 9-9-101 et seq.

Childcare facility licensing, § 20-78-201 et seq.

Revised Uniform Adoption Act, § 9-9-201 et seq.

Effective Dates. Acts 2005, No. 874, § 3: Mar. 15, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is the best interest of the children of Arkansas that the effectiveness of this act shall be immediate; that in the event of an extension of the regular session, the delay in the effective date of this act could do irreparable harm to the children of this state as well as to interfere with the proper administration and provision of essential governmental programs; and that this act is immediately necessary to ensure that the placement of children removed from their homes is made in the best interests of the children who are removed from their homes. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor

and the veto is overridden, the date the last house overrides the veto.”

Acts 2005, No. 888, § 3: Mar. 16, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that it is essential that the State of Arkansas maintains sufficient facilities within the state for the care and treatment of children with co-occurring substance abuse and psychiatric disorders; and that this act is immediately necessary to clarify that the state shall not negatively discriminate between the licensees that provide psychiatric treatment only and the licensees that provide the care and treatment of children with co-occurring substance abuse and psychiatric disorders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.” The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Acts 2011, No. 522, § 23: Mar. 21, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current child welfare agency licensing act is in urgent need of updating; that certain provisions of the act are unworkable and unclear, making it difficult of fulfill the purpose of the act; and that this act is immediately necessary for the Department of Human Services to carry out its duties with regard to child welfare agency licensing. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Gov-

ernor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2015, No. 861, § 9: Mar. 31, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that an audit by the Federal Bureau of Investigation found that the Department of Human Services is out of compliance with federal law regarding the confidentiality of criminal background checks; and that this act is immediately necessary because the public health and safety are at risk so long as the department remains out of compliance with federal law because of the threat of easy access to confidential records of criminal background checks. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2017, No. 319, § 3: Mar. 2, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the ability to place a minor into voluntary respite care provides meaningful assistance to a family in crisis by providing a temporary arrangement for the twenty-four-hour care of the minor; that voluntary respite care provides the least intrusive solution to a family crisis; and that this act is immediately necessary to ensure the stability and unity of families in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that some juve-

niles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that the creation of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile’s legal rights; that independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the preservation of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

RESEARCH REFERENCES

ALR. Social worker malpractice. 58 A.L.R.4th 977.
U. Ark. Little Rock L.J. Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

CASE NOTES

Federal Liability.
State immunity law cannot be used as a shield from liability under federal law. *Norfleet v. Ark. Dep’t of Human Servs.*, 989 F.2d 289 (8th Cir. 1993).
It was clearly established in 1991 that

the state had an obligation to provide adequate medical care, protection and supervision to a foster child, and the failure to do violated 42 U.S.C. § 1983. *Norfleet v. Ark. Dep’t of Human Servs.*, 989 F.2d 289 (8th Cir. 1993).

9-28-401. Short title.

This subchapter shall be known as the “Child Welfare Agency Licensing Act”.

History. Acts 1997, No. 1041, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

9-28-402. Definitions.

As used in this subchapter:

(1) "Adoptive home" means a household of one (1) or more persons that has been approved by a licensed child placement agency to accept a child for adoption;

(2) "Adverse action" means any petition by the Department of Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:

(A) Revocation of license;

(B) Suspension of license;

(C) Conversion of license from regular or provisional status to probationary status;

(D) Imposition of a civil penalty;

(E) Denial of application; or

(F) Reduction of licensed capacity;

(3) "Alternative compliance" means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a rule, provided that the licensee has demonstrated how an alternate plan of compliance will meet or exceed the intent of the rule;

(4) "Board" means the Child Welfare Agency Review Board;

(5) "Boarding school" means an institution that is operated solely for educational purposes and that meets each of the following criteria:

(A) The institution is in operation for a period of time not to exceed the minimum number of weeks of classroom instruction required of schools accredited by the Division of Elementary and Secondary Education;

(B) The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year round, except that this provision does not apply to students from foreign countries; and

(C) The parents of children placed in the institution retain custody and planning and financial responsibility for the children;

(6) "Child" means a person who is:

(A) From birth to eighteen (18) years of age; or

(B) Adjudicated dependent-neglected, dependent, or a member of a family in need of services before eighteen (18) years of age and for whom the juvenile division of a circuit court retains jurisdiction under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(7) "Child placement agency" means a child welfare agency, not including any person licensed to practice medicine or law in the State of Arkansas, that engages in any of the following activities:

(A) Places a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(B) Plans for the placement of a child into a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(C) Assists the placement of a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter; or

(D) Places, plans for the placement, or assists in the placement of a child victim of human trafficking in a home or any type of shelter or facility;

(8) "Child welfare agency" means any person, corporation, partnership, voluntary association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that engages in any of the following activities:

(A) Receives a total number of six (6) or more unrelated minors for care on a twenty-four-hour basis for the purpose of ensuring the minors receive care, training, education, custody, or supervision, whether or not there are six (6) or more children cared for at any single physical location;

(B) Places any unrelated minor for care on a twenty-four-hour basis with persons other than themselves;

(C) Plans for or assists in the placements described in subdivision (8)(B) of this section; or

(D) Receives, places, plans, or assists in the placement of a child victim of human trafficking in a home or any type of shelter or facility;

(9)(A) "Class A violation" means a violation of an essential standard, including any of those governing fire, health, safety, nutrition, staff-to-child ratio, and space.

(B) Operation of an unlicensed child welfare agency shall also be a Class A violation unless specifically exempted as provided in this subchapter;

(10) "Class B violation" means any other violation of a standard that is not a Class A violation;

(11) "Emergency child care" means any residential childcare facility that provides care to children on a time-limited basis, not to exceed ninety (90) days;

(12) "Exempt child welfare agency" means any person, corporation, partnership, voluntary association or other entity, whether established for profit or otherwise, that otherwise fits the definition of a child welfare agency but that is specifically exempt from the requirement of obtaining a license under this subchapter. Those agencies specifically exempt from the license requirement are:

(A) A facility or program owned or operated by an agency of the United States Government;

(B)(i) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities.

(ii) In order to maintain exempt status, the state child welfare agency shall state every two (2) years in written form signed by the

persons in charge that their agency is in substantial compliance with published state agency child welfare standards.

(iii) Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;

(C) A facility or program owned or operated by or under contract with the Division of Correction;

(D) A hospital providing acute care licensed pursuant to § 20-9-201 et seq.;

(E) Any facility governed by the Department of Human Services State Institutional System Board or its successor;

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

(G) Any facility licensed as a family home pursuant to the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

(H) Any boarding school as defined in this section;

(I) Any temporary camp as defined in this section;

(J) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and that complies within the conditions of the exemption for church-operated agencies as set forth in this subchapter;

(L) The Division of Developmental Disabilities Services; and

(M) Any intellectual or other developmental disabilities services waiver provider licensed under § 20-48-208 or the Location Act for Community Homes for Individuals with Intellectual and Developmental Disabilities, § 20-48-601 et seq.;

(13)(A) "Fictive kin" means a person selected by the Division of Children and Family Services who:

(i) Is not related to a child by blood or marriage; and

(ii) Has a strong, positive, and emotional tie or role in the:

(a) Child's life; or

(b) Child's parent's life if the child is an infant.

(B) The Director of the Division of Children and Family Services or his or her designee shall approve a fictive kin for an infant;

(14)(A) "Foster home" means the home of an individual or family:

(i) That is licensed or approved as a foster home under the terms of this subchapter; and

(ii) Where a child in foster care is placed into the care of an individual who is licensed or approved to be a foster parent under this subchapter.

(B) "Foster home" does not include an adoptive home or a home suspended or closed by a child placement agency;

(15) "Independent living home" means any child welfare agency that provides specialized services in adult living preparation in an experimental setting for persons sixteen (16) years of age or older;

(16) "Minimum standards" means those rules as established by the Child Welfare Agency Review Board that set forth the minimum acceptable level of practice for the care of children by a child welfare agency;

(17) "Provisional foster home" means a foster home opened for no more than six (6) months by the Division of Children and Family Services for a relative or fictive kin of a child in the custody of the Division of Children and Family Services after it:

(A) Determines that placement with the proposed fictive kin or relative is in the best interest of the child;

(B) Conducts a health and safety check, including a Child Maltreatment Central Registry check and either a criminal background check or a check with local law enforcement, of the relative's home or home of the fictive kin; and

(C) Performs a visual inspection of the home of the relative or fictive kin to verify that the relative or fictive kin and the home meet the standards for opening a regular foster home;

(18) "Psychiatric residential treatment facility" means a residential childcare facility in a nonhospital setting that provides a structured, systematic, therapeutic program of treatment under the supervision of a psychiatrist, for children who are emotionally disturbed and in need of daily nursing services, psychiatrist's supervision, and residential care but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital;

(19) "Qualified nonprofit organization" means a charitable or religious institution that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3), that assists a parent, guardian, or legal custodian of a child with the process of entering into an authorization agreement in the form of a power of attorney for voluntary respite care, including without limitation identifying an appropriate voluntary respite care placement for each child subject to the agreement and assisting a parent, guardian, or legal custodian in locating and contacting a voluntary respite care provider;

(20) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

(21) "Religious organization" means a church, synagogue, or mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

(22) "Residential childcare facility" means any child welfare agency that provides care, training, education, custody, or supervision on a

twenty-four-hour basis for six (6) or more unrelated children, excluding foster homes that have six (6) or more children who are all related to each other but who are not related to the foster parents;

(23) “Special consideration” means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a rule if the licensee has demonstrated that the deviation is in the best interest of the children and does not pose a risk to persons served by the licensee;

(24)(A) “Substantial compliance” means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency.

(B) Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

(25) “Temporary camp” means any facility or program providing twenty-four-hour care or supervision to children that meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement;

(26) “Unrelated minor” means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction;

(27)(A) “Voluntary respite care” means a temporary placement arrangement facilitated by a qualified nonprofit organization that engages in certain placement activities similar to a child placement agency or child welfare agency.

(B) “Voluntary respite care” does not include placements provided by a person or an entity that otherwise qualifies as an exempt child welfare agency as that term is defined in subdivision (12) of this section; and

(28) “Voluntary respite care provider” means a person, approved by a qualified nonprofit organization, who enters into a written agreement with a parent, guardian, or legal custodian of a minor whereby:

(A) The parent, guardian, or legal custodian voluntarily decides to place the minor into voluntary respite care and actively participates in the process of placing the minor into voluntary respite care;

(B) The placement of a minor into voluntary respite care is made for the purpose of assisting a family in crisis by providing a temporary arrangement for the twenty-four-hour care of the minor;

(C) The parent, guardian, or legal custodian of the minor retains the authority to terminate the voluntary respite care at any time and may immediately regain physical custody of the minor; and

(D) The voluntary respite care provider does not engage in an activity described in subdivision (8)(A) or subdivision (8)(D) of this section.

History. Acts 1997, No. 1041, § 2; 2005, No. 874, § 2; 2005, No. 1766, § 1; 2005, No. 2234, § 1; 2007, No. 634, § 1; 2009, No. 723, § 1; 2011, No. 522, §§ 1-5; 2013, No. 478, § 4; 2013, No. 1275, § 1; 2015, No. 1138, §§ 1, 2; 2017, No. 319, § 1; 2017, No. 700, §§ 3, 4; 2019, No. 315, § 722; 2019, No. 381, §§ 1, 2; 2019, No. 663, § 3; 2019, No. 910, §§ 2203, 2204; 2019, No. 1035, §§ 4, 5.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 2005, Nos. 1766 and 2234. Subdivisions (22) and (23) of this section were also amended by Acts 2005, No. 874, § 2, to read as follows: “(22) ‘Provisional foster home’ means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Human Services for a relative of a child in the custody of the division after the division conducts: (A) A health and safety check, including a central registry check and a criminal background check or check with local law enforcement, on the relative and the relative’s home; and (B) A visual inspection of the home of the relative;

“(23) ‘Relative’ means a person within the fifth degree of kinship by virtue of blood or adoption.”

Amendments. The 2015 amendment added (7)(D) and (8)(D).

The 2017 amendment by No. 319 added the definitions for “Qualified nonprofit organization”, “Voluntary respite care”, and “Voluntary respite care provider”.

The 2017 amendment by No. 700 inserted present (17)(A) and redesignated the remaining subdivisions of (17) accordingly; and added the definition for “Fictive kin”.

The 2019 amendment by No. 315 substituted “rule” for “regulation” twice in (3).

The 2019 amendment by No. 381, in (17)(B), substituted “Child Maltreatment Central Registry” for “central registry”, inserted “either”, and added “or home of the fictive kin”; and, in (17)(C), inserted “or fictive kin” twice, and deleted “will” following the second occurrence of “home”.

The 2019 amendment by No. 663 rewrote (14)(A); and inserted “an adoptive home or” in (14)(B).

The 2019 amendment by No. 910 substituted “Division of Elementary and Secondary Education” for “Department of Education” in (5)(A); and substituted “Division of Correction” for “Department of Correction” in (12)(C).

The 2019 amendment by No. 1035 substituted “Individuals with Intellectual and Developmental Disabilities” for “Developmentally Disabled Persons” in (12)(F), (12)(G), and (12)(M); and inserted “intellectual or other” in (12)(M).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General As-

sembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

9-28-403. Child Welfare Agency Review Board — Creation — Authority.

(a)(1) There is created the Child Welfare Agency Review Board to serve as the administrative body to carry out the provisions of this subchapter.

(2) The board shall have the authority to promulgate rules to enforce the provisions of this subchapter.

(b) The board may also identify and implement alternative methods of regulation and enforcement that may include, but not be limited to:

(1) Expanding the types and categories of licenses issued for programs falling within the definition of “child welfare agency”, as may be

required by changes in the types of child welfare programs that may occur, and to promulgate separate rules for each category of license as it may deem proper;

(2) Using the standards of other licensing authorities or compliance-reviewing professionals as being equivalent to partial compliance with board-promulgated rules, when those standards have been shown to predict compliance with the board-promulgated rules; and

(3) Using an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

(c)(1) The Department of Human Services is designated as the governmental agency charged with the enforcement of this subchapter.

(2) Only the department, licensees, agencies specifically exempted by this subchapter, and applicants for a license shall have standing to initiate formal proceedings before the board, except when otherwise provided by law.

(d) When any person, corporation, partnership, voluntary association, or other entity shall be found to operate or assist in the operation of a child welfare agency that has been licensed by the board or has had the license denied, revoked, or suspended by the board, and therefore has been ordered to cease and desist operation in accordance with the provisions of this subchapter, the board shall have the right to go into the circuit court in the jurisdiction in which the child welfare agency is being operated and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the person, corporation, partnership, voluntary association, or other entity from operating the child welfare agency.

(e) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all proceedings brought under this subchapter, except that the following provisions shall control during adverse action hearings to the extent that they conflict with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.:

(1) All parties to an adverse action shall be entitled to engage in and use formal discovery as provided for in Rules 26, 28-34, and 36 of the Arkansas Rules of Civil Procedure including:

- (A) Requests for admission;
- (B) Requests for production of documents and things;
- (C) Written interrogatories; and
- (D) Oral and written depositions; and

(2) All evidentiary rulings in an adverse action hearing shall be governed by the Arkansas Rules of Evidence with respect to the following types of evidence:

(A) The requirement of personal knowledge of a witness as required by Rule 602;

(B) The admissibility of character evidence as set forth by Rules 608 and 609;

(C) The admissibility of opinion evidence as set forth by Rules 701-703; and

(D) The admissibility of hearsay evidence as set forth by Rules 801-806.

(f)(1) Requests for subpoenas shall be granted by the Office of the Chief Counsel of the Department of Human Services or a designee if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(2) Subpoenas provided for in this section shall be served in the manner as now provided by law, returned, and a copy made and kept by the department.

(3) The fees and mileage for officers serving the subpoenas and witnesses answering the subpoenas shall be the same as now provided by law.

(4) Witnesses duly served with subpoenas issued under this section who shall refuse to testify or give evidence may be cited on an affidavit through application of the chief counsel of the department to the Pulaski County Circuit Court or any circuit court of the state where the subpoenas were served.

(5) Failure to obey the subpoena may be deemed a contempt, punishable accordingly.

History. Acts 1997, No. 1041, § 3; deleted “and regulations” following “rules” 2009, No. 723, §§ 2, 3; 2011, No. 522, § 6; in (a)(2); and substituted “rules” for “regulations” in (b)(1). 2019, No. 315, §§ 723, 724.

Amendments. The 2019 amendment

9-28-404. Child Welfare Agency Review Board — Composition.

(a) The Child Welfare Agency Review Board shall consist of Arkansas residents who shall be qualified as follows:

(1) The director of the division within the Department of Human Services designated by the Secretary of the Department of Human Services to administer this subchapter or his or her designee;

(2) One (1) representative from a privately owned, licensed child placement agency with expertise in foster care;

(3) One (1) representative from a privately owned, licensed child placement agency with expertise in adoptions;

(4) Two (2) representatives from licensed residential childcare facilities;

(5) One (1) representative from a licensed psychiatric residential treatment facility;

(6) One (1) representative from a licensed emergency shelter; and

(7) One (1) representative from the public at large.

(b) Members shall be appointed by the Governor for four-year terms expiring on March 1 of the appropriate year, except that in making initial appointments, one (1) of the members representing licensed child placement agencies and the member representing the public at large shall serve for two (2) years and two (2) of the members representing residential facilities shall serve for three (3) years.

(c) Members of the board shall serve without compensation, but each member of the board shall be entitled to reimbursement for expenses for necessary meals, lodging, and mileage in attending board meetings,

to be payable from funds appropriated for the maintenance and operation of the department.

(d) The members of the board shall select a chair from among its voting membership.

History. Acts 1997, No. 1041, § 4; 2001, No. 1414, §§ 1, 2; 2003, No. 1157, § 2; 2011, No. 522, §§ 7, 8; 2019, No. 910, § 5143.

substituted “Secretary of the Department of Human Services” for “Director of the Department of Human Services” in (a)(1).

Cross References. Compensation of state boards, § 25-16-901 et seq.

Amendments. The 2019 amendment

9-28-405. Child Welfare Agency Review Board — Duties.

(a)(1) The Child Welfare Agency Review Board shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, conversion, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

(2) The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

(3)(A) The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this subchapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(B) The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

(b) The board may amend the rules promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c)(1) The board shall have exclusive authority to promulgate rules that:

(A) Promote the health, safety, and welfare of children in the care of a child welfare agency;

(B) Promote safe and healthy physical facilities;

(C) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(D) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;

(E) Ensure adequate and healthy food service;

(F) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under this subchapter, or of child maltreatment laws;

(G) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;

(H) Ensure that criminal record checks and central registry checks are completed on owners, operators, and employees of a child welfare agency as set forth in this subchapter;

(I) Require the compilation of reports and making those reports available to the Division of Youth Services when the board determines it is necessary for compliance determination or data compilation;

(J) Ensure that a child placement agency:

(i) Treats clients seeking or receiving services in a professional manner, as defined by rules promulgated pursuant to this section; and

(ii) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Human Services where complaints can be lodged;

(K) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program; and

(L) Establish rules governing retention of licensing records maintained by the Department of Human Services.

(2) This subchapter shall not be construed to prevent a licensed child welfare agency from adopting and applying internal operating procedures that meet or exceed the minimum standards required by the board.

(d)(1) Provided that the health, safety, and welfare of children in the care of a child welfare agency are not endangered, nothing in this subchapter shall permit the board to promulgate or enforce any rule that has the effect of:

(A) Interfering with the religious teaching or instruction offered by a child welfare agency;

(B) Infringing upon the religious beliefs of the holder or holders of a child welfare agency license;

(C) Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services;

(D) Infringing upon the parent's right to consent to a child's participating in prayer or other religious practices while in the care of the child welfare agency; or

(E) Prohibiting the use of corporal discipline.

(2)(A)(i) A child welfare agency that articulates a sincerely held religious belief that is violated by a specific rule promulgated by the board shall notify the department in writing of the belief and the specific rule that violates the belief.

(ii) The rule shall be presumptively invalid as applied to that child welfare agency.

(B)(i) The department may then file a petition before the board seeking to enforce the rule.

(ii) The department shall bear the burden of showing that the health, safety, or welfare of children would be endangered by the exemption, and if the board so finds by a preponderance of the evidence, the board shall render a finding of fact so concluding.

(e) The board shall issue all licenses to child welfare agencies upon majority vote of board members present during each properly called board meeting at which a quorum is present when the meeting is called to order.

(f)(1)(A) The board shall have the power to deny an application to operate a child welfare agency or revoke or suspend a previously issued license to operate a child welfare agency.

(B) The board may deny, suspend, convert, or revoke a child welfare agency license or issue letters of reprimand or caution to a child welfare agency if the board finds by a preponderance of the evidence that the applicant or licensee:

(i) Fails to comply with the provisions of this subchapter or any published rule of the board relating to child welfare agencies;

(ii) Furnishes or makes any statement or report to the department that is false or misleading;

(iii) Refuses or fails to submit required reports or to make available to the department any records required by it in making an investigation of the agency for licensing purposes;

(iv) Refuses or fails to submit to an investigation or to reasonable inspection by the department;

(v) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;

(vi) Fails to engage in a course of professional conduct in dealing with clients being served by the child placement agency, as defined by rules promulgated pursuant to this section;

(vii) Demonstrates gross negligence in carrying out the duties at the child placement agency; or

(viii) Fails to provide clients involved in the process of adoption of a child with correct and sufficient information pertaining to the adoption process, services, and costs.

(2) Any denial of application or revocation or suspension of a license shall be effective when made.

(g) The board shall review the qualifications of persons required to have background checks under this subchapter.

(h)(1) The board or its designee may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a rule promulgated under this subchapter but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

(2)(A) If the board or its designee grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible.

(B) The board or its designee may grant an agency's request for special consideration upon a finding that the request is in the best interest of the child or children or does not pose a risk to the persons served by the agency.

(C) Violations of those terms shall constitute a rule violation.

(i)(1)(A) The board shall have the authority to impose a civil penalty upon any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter, except that the imposition of civil penalties shall not apply to agencies that have been granted a church-operated exemption pursuant to this subchapter.

(B)(i) The board may impose a civil penalty upon any person, partnership, group, corporation, organization, or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas pursuant to this subchapter that advertises, places, plans for, or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(ii) The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

(2) The board shall have the discretion to impose a civil penalty pursuant to this section when the board determines by clear and convincing evidence that the person sought to be charged has violated this subchapter or the rules promulgated thereunder willfully, wantonly, or with conscious disregard for law or rule.

(3) The board may impose civil penalties as follows:

(A)(i) Class A violations as defined in this subchapter shall be subject to a civil penalty of five hundred dollars (\$500) for each violation, with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than two thousand five hundred dollars (\$2,500) for Class A violations occurring in any one (1) calendar month; and

(B)(i) Class B violations as defined in this subchapter shall be subject to a civil penalty of one hundred dollars (\$100) for each violation with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than five hundred dollars (\$500) for Class B violations occurring in any one (1) calendar month.

(4) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action by the Attorney General.

(j)(1)(A) The board shall notify the applicant or licensee of the department's petition for adverse action in writing and set forth the facts forming the basis for the request for the adverse action.

(B) This notice shall offer the licensee the opportunity for a predeprivation adverse action hearing to determine if the adverse action should be taken against the licensee or applicant.

(2) This section does not prevent the department or the board from closing a child welfare agency on an emergency basis if emergency closure is immediately required to protect the health, safety, or welfare of children, in which case the licensee shall be entitled to a post-deprivation adverse action hearing.

(k)(1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) Within ten (10) business days after rendering a decision, the board shall forward to the applicant or licensee written findings of fact and conclusions of law articulating the board's decision.

(B) The board shall also issue an order that the applicant or licensee cease and desist from the unlawful operation of a child welfare agency if the adverse action taken was revocation or suspension of the license or denial of an application.

(l)(1) If, upon the filing of a petition for a judicial review, the reviewing court determines that there is a substantial possibility that the board's decision against the licensee or applicant may be reversed, the circuit court may enter a stay prohibiting enforcement of a decision of the board, provided that the court articulates the facts from the adverse action hearing record that constitute a substantial possibility of reversal.

(2)(A) Thereafter, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay.

(B) If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(m) All rules promulgated under this section and all public comment received in writing by the department in response shall be made available for review by the Senate Interim Committee on Children and Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and by the Governor or his or her designee from among the Governor's staff.

(n)(1)(A) The validity or application of any rule promulgated by the board under authority of this subchapter shall be subject to remedies provided by law for obtaining declaratory judgments at the suit of any interested person instituted in the circuit court of any county in which the plaintiff resides or does business or in Pulaski County Circuit Court.

(B) However, the board must be named a party defendant and the board must be summoned as in an action by ordinary proceedings.

(2) If a juvenile is found to be maltreated due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility

employing that person from providing care, training, education, custody, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(3)(A) If the person or facility other than the parent or guardian of the juvenile found to be maltreated was not subject to this subchapter, the court may order the person or facility to obtain a license from the board as a condition precedent to the person's or facility's providing care, training, education, custody, or supervision of any juveniles of whom the person or facility is not the parent or guardian.

(B) If the court so orders, this subchapter shall thereafter apply to the person or facility subject to the court order.

(o)(1) The department shall maintain a website accessible to the general public that contains information on child placement agencies.

(2) The website shall contain:

(A) The name, phone number, and address of all child placement agencies licensed by the board;

(B) Information on each child placement agency, specifically if the license is in good standing, if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the board; and

(C) The name and contact information for a person in the unit who handles complaints about child placement agencies.

History. Acts 1997, No. 1041, § 5; 2005, No. 2225, § 1; 2005, No. 2234, § 2; 2009, No. 723, §§ 4-6; 2011, No. 522, §§ 9-14; 2013, No. 1275, § 2; 2019, No. 315, §§ 725-727.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b); substituted "rule" for "regulation" preceding "promulgated" in (h)(1); and substituted "rule" for "regulation" in (i)(2).

CASE NOTES

Scope of Authority.

The Child Welfare Agency Review Board violated the separation of powers doctrine and exceeded the authority given to it by the General Assembly when it promulgated § 200.3.2 of the Minimum Licensing Standards for Child Welfare Agencies, which prohibited persons with adult homosexual members in their household from becoming foster parents;

although the board was required to promulgate regulations to protect the health, safety, and welfare of foster children, there was no evidence that living with an adult homosexual placed foster children in danger, and the board was not required to issue regulations based upon moral standards or beliefs. *Dep't of Human Servs. v. Howard*, 367 Ark. 55, 238 S.W.3d 1 (2006).

9-28-406. Department enforcement duties.

(a)(1) The Department of Human Services shall advise the Child Welfare Agency Review Board regarding proposed rules.

(2) The department shall obtain comments from the board prior to initiating the rule promulgation process.

(b)(1) The board is authorized to make an inspection and investigation of any proposed or operating child welfare agency and of any personnel connected with that agency to the extent that an inspection

and investigation are necessary to determine whether the child welfare agency will be or is being operated in accordance with this subchapter and the rules promulgated by the board.

(2) The board may delegate this authority to any agencies of the State of Arkansas whom the board deems proper.

(c)(1) The department or any other public agency having authority or responsibility with respect to child maltreatment shall have the authority to investigate any alleged or suspected child maltreatment in any child welfare agency, whether licensed or exempt.

(2) Nothing contained in this section shall be construed to limit or restrict that authority.

(d)(1) The department shall assist licensees and applicants in complying with published rules by issuing advisory opinions regarding matters of rule compliance when so requested.

(2) The procedure for issuing advisory opinions shall be as follows:

(A)(i) Any licensee or applicant for a license may submit a written request for an advisory opinion on whether or not a practice in any planned or existing child welfare agency complies with the rules promulgated pursuant to this subchapter.

(ii) The department must respond to the request in writing within twenty (20) business days of receiving the request.

(iii) If the department's response is that the subject of the request would not comply with published standards, the department shall suggest an alternative practice that in its opinion would comply with published standards when it is possible to do so; and

(B)(i) A written opinion required in subdivision (d)(2)(A) of this section is binding on the department as a declaratory order if the applicant or licensee has acted in reliance on the opinion.

(ii) Notwithstanding the foregoing, in no event shall the advisory opinion be binding on the board if the compliance issue that is the subject of the advisory opinion is presented to the board for review.

(e)(1) The department shall inspect child welfare agencies as provided in this subsection.

(2) If the department finds that a child welfare agency has failed to comply with an applicable law or rule, the department shall issue a notice of noncompliance to the child welfare agency. The department's notice of noncompliance shall contain:

(A) A factual description of the conditions that constitute a violation of the law or rule;

(B) The specific law or rule violated; and

(C) A reasonable time frame within which the violation must be corrected.

(3)(A)(i) If the child welfare agency believes that the contents of the department's notice of noncompliance are in error, the child welfare agency may ask licensing authorities to reconsider the parts of the notice of noncompliance that are alleged to be in error.

(ii) The request for reconsideration must be in writing, delivered by certified mail within twenty (20) business days of receipt of the notice of noncompliance.

(iii) The request shall specify the parts of the notice of noncompliance that are alleged to be in error, explaining why they are in error, and include documentation to support the allegation of error.

(B)(i) The department shall render a decision on the request for reconsideration within twenty (20) working days after the date the request for reconsideration was received.

(ii) The licensee's request for reconsideration and supporting documentation shall be retained by the department and made a part of the licensee's record.

(4)(A) If upon reinspection or other acceptable means of verification, the department finds that the licensee has corrected the violation or violations specified in the notice of noncompliance, the department shall note the correction and the date the correction was verified in the licensee's record.

(B) If upon reinspection, the department finds that the licensee has not corrected the violations specified in the notice of noncompliance within the required time frame, the department may in its discretion petition the board to impose appropriate adverse action against the licensee.

(C) In the case of an applicant for a license, if the board or its designee finds that the applicant has not corrected the violations in a previously issued notice of noncompliance, the department may recommend denial of the application for a child welfare agency license.

History. Acts 1997, No. 1041, § 6; 2011, No. 522, § 15; 2013, No. 1275, § 3; 2019, No. 315, §§ 728, 729.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b)(1) and (d)(1).

9-28-407. Licenses required and issued.

(a)(1) It shall be unlawful for any person, partnership, group, corporation, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest to operate or assist in the operation of a child welfare agency that has not been licensed by the Child Welfare Agency Review Board from licensing pursuant to this subchapter.

(2) This license shall be required in addition to any other license required by law for all entities that fit the definition of a child welfare agency and are not specifically exempted, except that no nonpsychiatric residential treatment facility or agency licensed or exempted pursuant to this subchapter shall be deemed to fall within the meaning of § 20-10-101 for any purpose.

(3) Any child welfare agency capacity licensed or permitted by the board as of March 1, 2003, whether held by the original licensee or by a successor in interest to the original licensee, is exempted from:

(A) Obtaining any license or permit from the Office of Long-Term Care;

(B) Obtaining any permit from the Health Services Permit Agency or the Health Services Permit Commission to operate at the capacity licensed by the board as of March 1, 2003; and

(C) Obtaining any permit from the Health Services Permit Agency or the Health Services Permit Commission to operate at any future expanded capacity serving only non-Arkansas residents unless a permit is required by federal law or regulation.

(4) Any further expansion of capacity by a licensee of the board shall require a license or permit from the Office of Long-Term Care and the Health Services Permit Agency unless the bed expansion is exempted under subdivisions (a)(3)(A)-(C) of this section.

(5)(A) Subdivisions (a)(3) and (4) of this section shall be construed to include a child welfare agency that is licensed or permitted by the board as a residential facility as of March 1, 2003, if the licensee then met and continues to meet the following criteria:

(i) The licensee is a nonhospital-based residential facility that specializes in providing treatment and care for seriously emotionally disturbed children under eighteen (18) years of age who have co-occurring substance abuse and psychiatric disorders;

(ii) The licensee possesses accreditation from at least one (1) of the following national accreditation entities:

(a) The Commission on Accreditation of Rehabilitation Facilities, Inc.;

(b) The Council on Accreditation for Children and Family Services, Inc.; or

(c) The Joint Commission on Accreditation of Healthcare Organizations, Inc.;

(iii) The licensee is licensed by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services or its successor; and

(iv) The licensee is operating a nontraditional program that is approved by the Division of Elementary and Secondary Education.

(B)(i) Licensees described in subdivision (a)(5)(A) of this section shall be eligible for reimbursement by the Arkansas Medicaid Program under the same methodology and at the same reimbursement rates as residential treatment facilities that do not specialize in treating children with co-occurring substance abuse and psychiatric disorders.

(ii) However, Medicaid payments shall be reduced by payments received from other payors in connection with Medicaid-covered care and treatment furnished to Medicaid recipients.

(b)(1) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of this subchapter, to knowingly violate the orders issued by the board, or to advertise the provision of child care or child placement when not licensed under this subchapter to provide those services, unless determined by the board to be exempt from licensure under this subchapter.

(2) Any violation of this section shall constitute a Class D felony.

(c)(1) Any person, partnership, group, corporation, organization, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, desiring to operate a child welfare agency shall first make application for a license or a church-operated exemption for the facility to the board on the application forms furnished for this purpose by the board.

(2)(A) The Department of Human Services shall also furnish to the applicant upon request an application form.

(B) The child welfare agency shall submit a separate application for license for each separate physical location of a child welfare agency.

(d)(1) The department shall review, inspect, and investigate each applicant to operate a child welfare agency and shall present a recommendation to the board whether the board should issue a license and what the terms and conditions of the license should be.

(2) The department shall complete its recommendation within ninety (90) days after receiving a complete application from the applicant. A complete application shall consist of:

(A) A completed application form prepared and furnished by the board;

(B) A copy of the articles of incorporation, bylaws, and current board roster, if applicable, including names and addresses of the officers;

(C) A complete personnel list with verifications of qualifications and experience;

(D) Substantiation of the financial soundness of the child welfare agency's operation; and

(E) A written description of the child welfare agency's program of care, including intake policies, types of services offered, and a written plan for providing healthcare services to children in care.

(e)(1) The board shall issue a regular license that shall be effective until adverse action is taken on the license if the board finds that:

(A) The applicant for a child welfare agency license meets all licensing requirements; or

(B) The applicant for a child welfare agency license meets all essential standards, has a favorable compliance history, and has the ability and willingness to comply with all standards within a reasonable time.

(2)(A) The board may issue a provisional license that shall be effective for up to one (1) year if the board finds that the applicant meets all essential standards but the applicant requires more frequent monitoring because the applicant's ability or willingness to meet all standards within a reasonable time has not been favorably determined.

(B) The board shall at no time issue a regular or provisional license to any agency or facility that does not meet all essential standards.

(f)(1) A license to operate a child welfare agency shall apply only to the owner stated on the application.

(2) The license shall be transferable, along with all capacity and rights of licensure, from:

(A) One (1) location to another; and

(B) One (1) owner to another, if permitted under subdivision (f)(3) of this section.

(3) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures shall be followed:

(A) The seller shall notify the department of the sale at least thirty (30) days before the completed sale;

(B) The seller shall remain responsible for the operation of the child welfare agency until the child welfare agency is closed or an amended license is issued to the buyer;

(C) The seller shall remain liable for all penalties assessed against the child welfare agency that are imposed for violations occurring before the transfer of a license to the buyer;

(D) The buyer shall provide all documentation required of a new applicant to the department;

(E) The buyer shall be subject to any corrective action notices to which the seller was subject; and

(F) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the Office of Long-Term Care and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission, shall apply in their entirety to the new owner of the child welfare agency.

(g) If the board votes to issue a license to operate a child welfare agency, the license must be posted in a conspicuous place in the child welfare agency and must state at a minimum:

(1) The full legal name of the entity holding the license, including the business name, if different;

(2) The address of the child welfare agency;

(3) The effective date and expiration date of the license, if applicable;

(4) The type of child welfare agency the licensee is authorized to operate;

(5) The maximum number and ages of children that may receive services from the child welfare agency, if applicable;

(6) The status of the license, whether regular, provisional, or probationary; and

(7) Any special conditions or limitations of the license.

(h)(1) Reports, correspondence, memoranda, case histories, or other materials, including protected health information, compiled or received by a licensee or a state agency engaged in placing a child, including both foster care and protective services records, shall be confidential and shall not be released or otherwise made available except to the extent permitted by federal law and only:

(A) To the Director of the Child Welfare Agency Review Board as required by rule;

(B) For adoptive placements as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(C) To multidisciplinary teams under § 12-18-106(a);

(D)(i) To the child's parent, guardian, or custodian.

(ii) However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child.

(iii) The licensee or state agency may redact counseling records, psychological or psychiatric evaluations, examinations, or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;

(E) To the child;

(F)(i) To healthcare providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child.

(ii) "Healthcare providers" includes doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;

(G) To school personnel and daycare centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;

(H)(i) To foster parents, the foster care record for foster children currently placed in their home.

(ii) However, information about the parents or guardians and any siblings not in the foster home shall not be redisclosed by a foster parent and shall only be used to assist the foster parent in the care of the child;

(I)(i) To the board.

(ii) However, at any board meeting no information that identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;

(J) To the Division of Child Care and Early Childhood Education;

(K) For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(L) Upon presentation of an order of appointment, to a court-appointed special advocate;

(M) To the attorney ad litem for the child;

(N) For law enforcement or the prosecuting attorney upon request;

(O) To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(P) In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;

(Q) For purposes directly connected with the administration of any of the state plans as outlined at 42 U.S.C. § 671(a)(8), as in effect January 1, 2001;

(R) For the administration of any other federal or federally assisted program that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;

(S)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services;

(T) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(U) To a person, provider, or government entity identified by the licensee or the state agency as having services needed by the child or his or her family;

(V) To volunteers authorized by the licensee or the state agency to provide support or services to the child or his or her family at the discretion of the licensee or the state agency and only to the extent information is needed to provide the support or services;

(W)(i) To a person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division of Children and Family Services to have value for the evaluation or development of policies and programs within the Division of Children and Family Services.

(ii) Any confidential information provided by the department for a research or evaluation project under this subdivision (h)(1)(W) shall not be redisclosed or published;

(X) To a child fatality review panel as authorized by the department; or

(Y) To the Child Welfare Ombudsman.

(2) Foster home and adoptive home records are confidential and shall not be released except:

(A) To the foster parents or adoptive parents;

(B) For purposes of review or audit, by the appropriate federal or state agency;

(C) Upon allegations of child maltreatment in the foster home or adoptive home, to the investigating agency;

(D) To the board;

(E) To the Division of Children and Family Services and the Division of Elementary and Secondary Education, including child welfare agency licensing specialists;

(F) To law enforcement or the prosecuting attorney upon request;

(G) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(H)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services; or

(I) To the attorney ad litem and court-appointed special advocate, the home studies on the potential adoptive families selected by the department to adopt the juvenile or as ordered by the court.

(3)(A) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this subsection.

(B) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(C) Nothing in this subchapter shall be construed to prevent subsequent disclosure by the child or his or her parent or guardian.

(D) Any data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the department are confidential and shall be sealed and not redisclosed without a protective order to ensure that items of evidence for which there is a reasonable expectation of privacy are not distributed to persons or institutions without a legitimate interest in the evidence.

(i) Foster parents approved by a child placement agency licensed by the department shall not be liable for damages caused by their foster children, nor shall they be liable to the foster children nor to the parents or guardians of the foster children for injuries to the foster children caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

History. Acts 1997, No. 1041, § 7; 1999, No. 1319, § 1; 2001, No. 1211, § 1; 2001, No. 1800, § 1; 2003, No. 1157, § 1; 2003, No. 1166, § 39; 2003, No. 1285, § 1; 2005, No. 888, § 2; 2005, No. 1766, § 2; 2005, No. 2234, §§ 3, 4; 2007, No. 634, § 2; 2009, No. 723, § 7; 2009, No. 758, § 16; 2011, No. 522, §§ 16-20; 2011, No. 591, § 10; 2013, No. 1107, § 10; 2013, No. 1275, §§ 4-7; 2015, No. 545, § 1; 2017, No. 329, § 1; 2017, No. 803, § 1; 2017, No. 913, § 27; 2019 No. 315, § 730; 2019, No. 910, §§ 2205, 2206; 2019, No. 945, § 4.

A.C.R.C. Notes. Acts 2005, No. 888, § 1, provided: "Child welfare agencies operating as residential facilities providing treatment to children with co-occurring substance abuse and psychiatric disorders are covered by the amendment of Arkansas Code §§ 9-28-407(a) and Arkansas Code § 20-8-107(c) by Act 1285 of 2003 so long as they were providing such care on or before March 1, 2003, and also meet the requirements of this act."

Acts 2019, No. 945, § 1, provided: "Legislative intent. It is the intent of the General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas."

Amendments. The 2015 amendment, in (h)(1)(J), substituted "Child Care and Early Childhood Education" for "Children and Family Services" and deleted "and the Department of Education, including child-welfare agency licensing specialists" at the end.

The 2017 amendment by No. 329 substituted "redisclosed by a foster parent and shall only be used to assist the foster parent in the care of the child" for "released" in (h)(1)(H)(ii).

The 2017 amendment by No. 803, in (h)(2)(I), substituted "studies on the potential adoptive families" for "study on the adoptive family" and added "or as ordered by the court".

The 2017 amendment by No. 913 substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (a)(5)(A)(iii).

The 2019 amendment by No. 315 substituted "rule" for "regulation" in (h)(1)(A).

The 2019 amendment by No. 910 substituted "Division of Elementary and Secondary Education" for "Department of Education" in (a)(5)(A)(iv) and (h)(2)(E).

The 2019 amendment by No. 945 added (h)(1)(Y).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

9-28-408. Church-related exemption — Definition.

(a)(1) Any church or group of churches exempt from the state income tax levied by the Income Tax Act of 1929, § 26-51-101 et seq., when operating a child welfare agency shall be exempt from obtaining a license to operate the facility by the receipt by the Child Welfare Agency Review Board of written request therefor, together with the written verifications required in subsection (b) of this section.

(2) A written request shall be made by those churches desiring exemption to the board, which is mandated under the authority of this subchapter to license all child welfare agencies.

(b)(1) In order to maintain an exempt status, the child welfare agency shall state every two (2) years in written form signed by the persons in charge that the agency has met the fire, safety, and health inspections and is in substantial compliance with published standards that similar nonexempt child welfare agencies are required to meet.

(2) Visits to review and advise exempt agencies shall be made as deemed necessary by the board to verify and maintain substantial compliance with all published standards for nonexempt agencies.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child are not endangered.

(c)(1) Any questions of substantial compliance with the published standards shall be reviewed by the board.

(2) Final administrative actions of the board shall be pursued by either party in the court of competent jurisdiction in the resident county of the facility under review.

(3) Challenge to the constitutionality or reasonableness of any rule or statute may be made prior to any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) As used in this section, the term "substantial compliance" and the term "is being operated in accordance with this subchapter" shall each mean that a church-operated exempt or a nonexempt child welfare agency is being operated within the minimum requirements for substantial compliance as promulgated by the board.

(2) It is the intent and purpose of this section that the term "substantial compliance" be applicable to all child welfare agencies.

History. Acts 1997, No. 1041, § 8; substituted “rule” for “regulation” in 2019, No. 315, § 731.

(c)(3).

Amendments. The 2019 amendment

9-28-409. Criminal record and child maltreatment checks.

(a)(1) Each of the following persons in a child welfare agency shall be checked with the Child Maltreatment Central Registry in his or her state of residence and any state of residence in which the person has lived for the past five (5) years and in the person’s state of employment, if different, for reports of child maltreatment in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) A foster parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(D) An adoptive parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(E) An owner having direct and unsupervised contact with children; and

(F) A member of the agency’s board of directors having direct and unsupervised contact with children.

(2) The Child Welfare Agency Review Board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3)(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the Child Welfare Agency Review Board to determine appropriate corrective action measures that would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The Child Welfare Agency Review Board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check at a minimum of every two (2) years, including adoptive parents who reside in Arkansas pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)(1) Each of the following persons in a child welfare agency shall be checked with the Identification Bureau of the Division of Arkansas State Police to determine if the person has pleaded guilty or nolo contendere to or has been found guilty of the offenses listed in this

subchapter in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care; and

(F)(i) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care, who are not residents of Arkansas shall provide state-of-residence criminal records checks, if available.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Division of Arkansas State Police to determine if any of the persons have pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board at a minimum of every two (2) years.

(3)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the Child Welfare Agency Review Board, evidence that all persons required to be checked with the Identification Bureau of the Division of Arkansas State Police under this subsection have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(4) All persons required to be checked with the Division of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) years, except that adoptive parents who reside in Arkansas shall repeat the check every two (2) years pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(c)(1) Each of the following persons in a child welfare agency who has not lived in Arkansas continuously for the past five (5) years shall have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and

regulation to determine if the person has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care; and

(F)(i) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care, shall not be required to have a criminal background check performed by the Federal Bureau of Investigation if:

(a) The adoptive parents and each member of the household age eighteen and one-half (18½) years of age and older, excluding children in foster care, have continuously resided in a state for at least five (5) years before the adoption; and

(b) The state-of-residence criminal records check is available.

(2)(A)(i) A child in the custody of the department shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation to determine if any of the persons has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter.

(ii) A household member who turns eighteen (18) years of age has up to six (6) months from the date of his or her eighteenth birthday to have a background check completed.

(B) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the Child Welfare Agency Review Board, evidence that all persons required to be checked with the Identification Bureau of the Division of Arkansas State Police under this subsection have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

(C) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(d)(1) Each person required to have a criminal records check under this subchapter shall complete a criminal records check form developed

by the department and shall sign the form that contains the following under oath before a notary public:

(A) Certification that the subject of the check consents to the completion of the check;

(B) Certification that the subject of the check has not pleaded guilty or nolo contendere to or been found guilty of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made by the Child Welfare Agency Review Board with respect to his or her employment status or licensing status;

(D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare agency due to information obtained by the check that indicates that the subject of the check has pleaded guilty or nolo contendere to or been found guilty of or is under pending indictment for a crime listed in this subchapter; and

(E) Notification that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. No. 92-544.

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Division of Child Care and Early Childhood Education for processing within ten (10) days of hiring the employee or volunteer, who shall remain under conditional employment or volunteerism until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the Child Welfare Agency Review Board from denying a license or exemption to an owner or preventing an operator or employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

(4) In the event a legible set of fingerprints as determined by the Division of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of two (2) attempts by qualified law enforcement personnel, the Child Welfare Agency Review Board shall determine eligibility based upon a name check by the Division of Arkansas State Police and the Federal Bureau of Investigation.

(5)(A) An owner or operator of a child welfare agency shall not be liable during a conditional period of service for hiring any person required to have a background check pursuant to this subchapter who may be subject to a charge of false swearing upon completion of the registry and criminal records check.

(B)(i) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or reasonably should have known was material.

(ii) Lack of knowledge that information is material is not a defense to a charge of false swearing.

(C) For purposes of this subchapter, false swearing is a Class A misdemeanor.

(e)(1) A report of a pleading of guilty or nolo contendere or a finding of guilt to any charge listed in this subsection shall be:

(A) Returned to the Division of Child Care and Early Childhood Education for review; and

(B) Considered regardless of whether or not the record is expunged, pardoned, or otherwise sealed.

(2) A person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section shall be absolutely and permanently prohibited from having direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

(A) Abuse of an endangered or impaired person, if felony, § 5-28-103;

(B) Arson, § 5-38-301;

(C) Capital murder, § 5-10-101;

(D) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;

(E) Kidnapping, § 5-11-102;

(F) Murder in the first degree, § 5-10-102;

(G) Murder in the second degree, § 5-10-103;

(H) Rape, § 5-14-103;

(I) Sexual assault in the first degree, § 5-14-124;

(J) Sexual assault in the second degree, § 5-14-125;

(K) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and

(L) Trafficking of persons, § 5-18-103.

(3) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section shall not be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by a court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

(A) Criminal attempt, § 5-3-201, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(B) Criminal complicity, § 5-3-202, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(C) Criminal conspiracy, § 5-3-401, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(D) Criminal solicitation, § 5-3-301, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;

(E) Assault in the first, second, or third degree, §§ 5-13-205 — 5-13-207;

(F) Aggravated assault, § 5-13-204;

(G) Aggravated assault on a family or household member, § 5-26-306;

(H) Battery in the first, second, or third degree, §§ 5-13-201 — 5-13-203;

(I) Breaking or entering, § 5-39-202;

(J) Burglary, § 5-39-201;

(K) Coercion, § 5-13-208;

(L) Computer crimes against minors, § 5-27-601 et seq.;

(M) Contributing to the delinquency of a juvenile, § 5-27-220;

(N) Contributing to the delinquency of a minor, § 5-27-209;

(O) Criminal impersonation, § 5-37-208;

(P) Criminal use of a prohibited weapon, § 5-73-104;

(Q) Communicating a death threat concerning a school employee or student, § 5-17-101;

(R) Domestic battery in the first, second, or third degree, §§ 5-26-303 — 5-26-305;

(S) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(T) Endangering the welfare of a minor in the first or second degree, §§ 5-27-205 and 5-27-206;

(U) Endangering the welfare of an incompetent person in the second degree, § 5-27-202;

(V) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;

(W) False imprisonment in the first or second degree, §§ 5-11-103 and 5-11-104;

(X) Felony abuse of an endangered or impaired person, § 5-28-103;

(Y) Felony interference with a law enforcement officer, § 5-54-104;

(Z) Felony violation of the Uniform Controlled Substance Act, § 5-64-101 et seq., § 5-64-201 et seq., § 5-64-301 et seq., § 5-64-401 et seq., and § 5-64-501 et seq.;

(A)(A) Financial identity fraud, § 5-37-227;

(B)(B) Forgery, § 5-37-201;

(C)(C) Incest, § 5-26-202;

(D)(D) Interference with court ordered custody, § 5-26-502;

(E)(E) Interference with visitation, § 5-26-501;

(F)(F) Introduction of controlled substance into the body of another person, § 5-13-210;

(G)(G) Manslaughter, § 5-10-104;

- (H)(H) Negligent homicide, § 5-10-105;
- (I)(I) Obscene performance at a live public show, § 5-68-305;
- (J)(J) Offense of cruelty to animals, § 5-62-103;
- (K)(K) Offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104;
- (L)(L) Pandering or possessing a visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
- (M)(M) Permanent detention or restraint, § 5-11-106;
- (N)(N) Permitting abuse of a minor, § 5-27-221;
- (O)(O) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
- (P)(P) Promoting obscene materials, § 5-68-303;
- (Q)(Q) Promoting obscene performance, § 5-68-304;
- (R)(R) Promoting prostitution in the first, second, or third degree, §§ 5-70-104 — 5-70-106;
- (S)(S) Prostitution, § 5-70-102;
- (T)(T) Public display of obscenity, § 5-68-205;
- (U)(U) Resisting arrest, § 5-54-103;
- (V)(V) Robbery, § 5-12-102;
- (W)(W) Aggravated robbery, § 5-12-103;
- (X)(X) Sexual extortion, § 5-14-113;
- (Y)(Y) Sexual solicitation, § 5-70-103;
- (Z)(Z) Sexual offenses, § 5-14-101 et seq.;
- (A)(A)(A) Simultaneous possession of drugs and firearms, § 5-74-106;
- (B)(B)(B) Soliciting money or property from incompetents, § 5-27-229;
- (C)(C)(C) Stalking, § 5-71-229;
- (D)(D)(D) Terroristic act, § 5-13-310;
- (E)(E)(E) Terroristic threatening, § 5-13-301;
- (F)(F)(F) Theft by receiving, § 5-36-106;
- (G)(G)(G) Theft of property, § 5-36-103;
- (H)(H)(H) Theft of public benefits, § 5-36-202;
- (I)(I)(I) Theft of services, § 5-36-104;
- (J)(J)(J) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- (K)(K)(K) Unlawful discharge of a firearm from a vehicle, § 5-74-107; and
- (L)(L)(L) Voyeurism, § 5-16-102.

(4) A former or future law of this or any other state or of the federal government that is substantially equivalent to one (1) of the offenses listed in subdivision (e)(3) of this section shall be considered as prohibiting under subdivisions (e)(2) and (3) of this section.

(f)(1) A person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be absolutely disqualified from being an owner, operator, volunteer, foster parent,

adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency during the period of the person's confinement, probation, or parole supervision unless the conviction is vacated or reversed.

(2) Except as provided under subdivision (f)(3) of this section, a person who has pleaded guilty or nolo contendere to or been found guilty of one (1) of the offenses listed in subdivision (e)(3) of this section shall not work in a child welfare agency unless:

(A) The date of a plea of guilty or nolo contendere, or the finding of guilt for a misdemeanor offense is at least five (5) years from the date of the records check; and

(B) There have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the background check request.

(3)(A) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole supervision unless the conviction is vacated or reversed.

(B) An owner, operator, volunteer, foster parent, adoptive parent, household member of a foster parent or adoptive parent, member of any child welfare agency's board of directors, or an employee in a child welfare agency shall not petition the Child Welfare Agency Review Board unless the agency supports the petition, which can be rebutted in the following manner:

(i) The applicant shall petition the Child Welfare Agency Review Board to make a determination that the applicant does not pose a risk of harm to any person;

(ii) The applicant shall bear the burden of making such a showing; and

(iii)(a) The Child Welfare Agency Review Board may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having pleaded guilty or nolo contendere to or been found guilty of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility.

(b) In making a determination, the Child Welfare Agency Review Board shall consider:

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of the crimes;

(4) The relation between the crime and the health, safety, and welfare of any person, such as the:

- (A) Age and vulnerability of the crime victim;
- (B) Harm suffered by the victim; and
- (C) Similarity between the victim and the persons served by a child welfare agency;
- (5) The time elapsed without a repeat of the same or similar event;
- (6) Documentation of successful completion of training or rehabilitation related to the incident; and
- (7) Any other information that relates to the applicant's ability to care for children or is deemed relevant.

(c) The Child Welfare Agency Review Board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action of the Child Welfare Agency Review Board and is not subject to review.

(d) Information obtained from the criminal records check and the national fingerprint criminal background checks is confidential and shall not be disclosed by the department except:

(1) To the members of the Child Welfare Agency Review Board during a Child Welfare Agency Review Board meeting only if no redisclosure by a Child Welfare Agency Review Board member occurs and all copies shared with the Child Welfare Agency Review Board members are returned to the department; or

(2) To the applicant and his or her attorney during a Child Welfare Agency Review Board meeting only if no redisclosure by the applicant or his or her attorney occurs and all copies shared with the applicant and his or her attorney are returned to the department.

History. Acts 1997, No. 1041, § 9; 1999, No. 328, § 1; 2001, No. 1211, § 2; 2003, No. 1087, § 11; 2005, No. 1766, § 3; 2005, No. 1923, § 1; 2007, No. 634, § 3; 2009, No. 723, §§ 8-10; 2011, No. 522, §§ 21, 22; 2011, No. 570, § 71; 2011, No. 591, § 11; 2013, No. 1275, § 8; 2015, No. 545, § 2; 2015, No. 547, § 3; 2015, No. 861, §§ 3, 4; 2017, No. 209, § 5; 2017, No. 367, § 10; 2017, No. 389, § 9; 2017, No. 664, § 5; 2019, No. 318, §§ 1-3.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provides: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2015 amendment by No. 545 substituted "Child Care and Early Childhood Education" for "Children and Family Services" in (e)(1)(A).

The 2015 amendment by No. 547 substituted "eighteen and one-half (18½)" for "eighteen (18)" throughout (b) and (c); and

substituted "two (2) years" for "year" in (b)(4).

The 2015 amendment by No. 861 substituted "documentation that the checks have been completed" for "the results of the checks" in (c)(2)(B); and added (f)(3)(B)(iii)(d).

The 2017 amendment by No. 209 added (e)(2)(L).

The 2017 amendment by No. 367 added (e)(2)(K).

The 2017 amendment by No. 389, in (e)(3)(KK), inserted "a" preceding "dog" and substituted "equine" for "horse".

The 2017 amendment by No. 664 added (e)(3)(L)(L)(L) [now (e)(3)(X)(X)].

The 2019 amendment substituted "all persons required to be checked with the Identification Bureau of the Division of Arkansas State Police under this subsection have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency" for "Department of Arkansas State Police crimi-

nal records checks have been initiated on all persons required to be checked and the results of the checks” in (b)(3)(A); substituted the same language for “the Federal Bureau of Investigation’s criminal records checks have been initiated on all persons required to be checked and documentation that the checks have been completed” in (c)(2)(B); and substituted “Division of

Child Care and Early Childhood Education of the Department of Human Services” for “Identification Bureau of the Department of Arkansas State Police” in (d)(2).

U.S. Code. Pub. L. No. 92-544, referred to in this section, is Act Oct. 25, 1972, 86 Stat. 1109. See 34 U.S.C. § 40102.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Criminal Law, Computer Crimes, 26 U. Ark. Little Rock L. Rev. 361.

CASE NOTES

Misconduct.

Although employee was discharged from his position at a residential facility for the psychiatric care of children because a central registry showed a report of child maltreatment, the listing demon-

strated no wrongful intent or evil design such as would constitute misconduct under § 11-10-514(a). *West v. Dir., Empl. Sec. Dep’t*, 94 Ark. App. 381, 231 S.W.3d 96 (2006).

9-28-410. Voluntary respite care agreement — Exemption and penalties.

(a)(1)(A) A voluntary respite care provider is exempt from obtaining a license under § 9-28-407 if approved by a qualified nonprofit organization under this section.

(B) A voluntary respite care provider shall be approved by a qualified nonprofit organization before it is eligible to enter into a voluntary respite care agreement with a parent, guardian, or legal custodian under this section.

(2) In order to approve a voluntary respite care provider, a qualified nonprofit organization shall ensure that a voluntary respite care provider:

(A) Successfully completes a:

(i) Fingerprint-based criminal background check performed by the Federal Bureau of Investigation;

(ii) Criminal records check with the Identification Bureau of the Division of Arkansas State Police; and

(iii) Child Maltreatment Central Registry check; and

(B) Is trained by the qualified nonprofit organization.

(3)(A) The qualified nonprofit organization shall maintain the training, background checks, and Child Maltreatment Central Registry check records under subdivision (a)(2) of this section, including the content and dates of training and full transcripts of the background checks and Child Maltreatment Central Registry check, for a period of not less than five (5) years after the minor attains eighteen (18) years of age.

(B) The qualified nonprofit organization shall make the records under subdivision (a)(3)(A) of this section available to a parent, guardian, or legal custodian who executes a voluntary respite care agreement in the form of a power of attorney under this section and any local, state, or federal authority conducting an investigation involving the voluntary respite care provider, parent, guardian, legal custodian, or the minor.

(b)(1)(A) A power of attorney concerning voluntary respite care shall be between the parent, guardian, or legal custodian of a minor and the voluntary respite care provider, and the power of attorney shall not include or involve another person, entity, or agency, including without limitation other qualified nonprofit organizations.

(B) The power of attorney shall be valid for no longer than one (1) year.

(2) The power of attorney in subdivision (b)(1) of this section that details the voluntary respite care arrangement may address physical custody issues, including emergency medical treatment, but it shall not transfer legal custody of the minor to the voluntary respite care provider.

(3) The execution of a power of attorney in subdivision (b)(1) of this section between a parent, guardian, or legal custodian, and a voluntary respite care provider shall not alone constitute child maltreatment under the Child Maltreatment Act, § 12-18-101 et seq.

(4) This section shall not be interpreted to prevent or otherwise limit the investigation of child maltreatment or a finding of child maltreatment where there is evidence of child maltreatment beyond the voluntary respite agreement between the voluntary respite care provider and the parent, guardian, or legal custodian.

(c)(1) A qualified nonprofit organization that knowingly fails to perform or verify the background and Child Maltreatment Central Registry check under subdivision (a)(2) of this section is subject to a civil penalty not to exceed five thousand dollars (\$5,000), payable to the state and recoverable in a civil action.

(2) A qualified nonprofit organization or an employee or volunteer of a qualified nonprofit organization that continues to assist a parent, guardian, legal custodian, or voluntary respite care provider in completing a power of attorney under this section when the background checks and Child Maltreatment Central Registry check conducted under subdivision (a)(2)(A) of this section disclose substantiated allegations of child abuse, neglect, exploitation, or similar crime is subject to a civil penalty not to exceed five thousand dollars (\$5,000), payable to the state and recoverable in a civil action.

(3) A qualified nonprofit organization or an employee or volunteer of a qualified nonprofit organization that knowingly fails to maintain records as required under subdivision (a)(3)(A) of this section or that knowingly fails to disclose information as required under subdivision (a)(3)(B) of this section is subject to a civil penalty not to exceed five thousand dollars (\$5,000), payable to the state and recoverable in a civil action.

History. Acts 2017, No. 319, § 2.

Publisher’s Notes. Former § 9-28-410 was repealed by Acts 2011, No. 591, § 12.

The former section was derived from Acts 1999, No. 1363, § 1; 2003, No. 1054, § 1; 2005, No. 1191, § 6; 2007, No. 634, § 4.

9-28-411 — 9-28-414. [Repealed.]

Publisher’s Notes. These sections, concerning foster children and educational issues, Department of Human Services — power to obtain information, smoking in the presence of foster children, and public disclosure of information on deaths and maltreatment, were repealed

by Acts 2011, No. 591, § 12. The sections were derived from the following sources:

9-28-411. Acts 2005, No. 1961, § 1.

9-28-412. Acts 2007, No. 605, § 1.

9-28-413. Acts 2007, No. 703, § 6.

9-28-414. Acts 2009, No. 674, § 1.

9-28-415. Foster home — Care requirements and limitations.

- (a) A foster home shall:
- (1) Provide substitute care within a family-like setting on a twenty-four-hour basis for any child placed in the foster home by a child placement agency;

(2) Adhere to the reasonable and prudent parent standard, as that standard is defined by Pub. L. No. 113-183, in the care of any child placed in the foster home by a child placement agency; and

(3) Be the primary residence of the individual or family that is owned, rented, sublet, or leased by the individual or family.
- (b) A child placement agency may own and support the foster home if the foster home is the primary residence of the individual or family and the foster home meets all other licensing requirements under this subchapter.
- (c) A foster home shall not provide care for more than six (6) children in foster care unless providing care for additional children will allow:
- (1) A parenting youth in foster care to remain with his or her child;

(2) Siblings in foster care to remain together;

(3) A child with an established meaningful relationship with a family to remain with the family; or

(4) A family with special training or skills to provide care to a child who has a severe disability.

History. Acts 2019, No. 663, § 4.

U.S. Code. The definition of the reasonable and prudent parent standard, re-

ferred to in subdivision (a)(2) of this section, is codified as 42 U.S.C. § 675(10).

SUBCHAPTER 5 — KINSHIP FOSTER CARE

[Repealed.]

SECTION.

9-28-501 — 9-28-503. [Repealed.]

9-28-504. [Repealed.]

SECTION.

9-28-505. [Repealed.]

9-28-501 — 9-28-503. [Repealed.]

Publisher's Notes. This subchapter, concerning the Kinship Foster Care Program, was repealed by Acts 2009, No. 324, § 1. The subchapter was derived from the following sources:

9-28-501. Acts 1995, No. 445, § 2.

9-28-502. Acts 1995, No. 445, § 1; 2001, No. 1435, § 1.

9-28-503. Acts 1995, No. 445, § 2; 2001, No. 1435, § 2.

9-28-504. [Repealed.]

Publisher's Notes. This section, concerning case plans, was repealed by Acts

2001, No. 1435, § 3. The section was derived from Acts 1995, No. 445, § 2.

9-28-505. [Repealed.]

Publisher's Notes. This section, concerning rules and regulations, was repealed by Acts 2001, No. 1435, § 4. The

section was derived from Acts 1995, No. 445, § 2; 1997, No. 312, § 2.

SUBCHAPTER 6 — THERAPEUTIC GROUP HOMES AND INDEPENDENT LIVING PROGRAMS

SECTION.

9-28-601. Legislative intent.

9-28-602. Definitions.

SECTION.

9-28-603. Establishment.

Effective Dates. Acts 1997, No. 312, § 24; Feb. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is

declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

9-28-601. Legislative intent.

In a significant number of cases, the health, safety, welfare, and basic emotional needs of children are not being met by remaining with their families. In certain situations, therapeutic group homes and independent living programs can provide the sense of structure, continuity, stability, and the positive role models that are necessary for a child to become a productive citizen, and these alternative living environments are far less expensive than maintaining a child in the penal system. Therefore, it is the intent of this legislation to establish independent

living programs for youths in strategic areas throughout Arkansas for the purpose of intervention.

History. Acts 1995, No. 1113, § 1; 1997, No. 885, § 1.

9-28-602. Definitions.

As used in this subchapter:

- (1) "Division" means the Division of Youth Services;
- (2) "Independent living programs" means residential and nonresidential services provided to youths that may include, but not be limited to:
 - (A) Intensive case management;
 - (B) Adult supervision;
 - (C) Transportation;
 - (D) Vocational and educational assistance; and
 - (E) Counseling, including substance abuse counseling; and
- (3) "Therapeutic group homes" means small family-like group living facilities that include supportive services to remedy social and behavioral problems of the youths served.

History. Acts 1995, No. 1113, § 2.

9-28-603. Establishment.

- (a) The Division of Youth Services will issue requests for proposals for contracts for the establishment of independent living programs.
- (b) The programs shall:
 - (1) Provide case management, adult supervision, and treatment services for participant youths, as outlined in an individual case plan;
 - (2) Provide a continuum of treatment services in order to enable youths to be increasingly less dependent on public institutions and ultimately to live successfully without adult supervision;
 - (3) Establish a minimum of ten (10) independent living programs within Arkansas;
 - (4) Maintain a record of all services provided in individual client files;
 - (5) Gather follow-up data on all participants for a minimum of three (3) years after termination of services for evaluation purposes; and
 - (6) Provide an annual report to the division and the Senate Interim Committee on Children and Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs summarizing outcome data in areas related to educational achievement, employment, and criminal justice contact of the participants and other information as requested by the division.

History. Acts 1995, No. 1113, § 3; 1997, No. 312 § 3; 1997, No. 885, § 2.

SUBCHAPTER 7 — COMMUNITY-BASED SANCTIONS

SECTION.

9-28-701. Legislative findings.

9-28-702. Sanctions — Use and availability.

SECTION.

9-28-703. Sanctions — Position.

9-28-704. Contracts with community-based providers.

Cross References. Disposition of juvenile offenders, §§ 9-27-330 and 9-27-331.

9-28-701. Legislative findings.

(a) Presently circuit judges must often choose between imposing no sanction at all or committing juveniles to the Division of Youth Services. Judges should have punitive options available as alternatives to confinement. Therefore, it is the intent of the General Assembly that a continuum of graduated sanctions be available in every judicial district in Arkansas and that the division provide for a continuum of sanctions that may be imposed in the community in lieu of commitment to the division in every situation.

(b) Further, the General Assembly recognizes that sanctions are usually not effective unless the sanctions are coupled with treatment and intervention services that address the underlying problems of the youth and his or her family. It is for this reason the General Assembly has provided that the community-based sanctions program be implemented by the division as part of its community-based provider contracts, and that any and all funds specifically appropriated to implement this subchapter are in addition to those funds provided for other prevention intervention, therapeutic, and family services and shall be added to existing community-based contracts without further request for proposal, but must be spent exclusively to implement and support community-based sanctions.

History. Acts 1997, No. 710, § 1.

9-28-702. Sanctions — Use and availability.

(a) The Division of Youth Services shall ensure that each judicial district has a continuum of sanctions available through its contracts with community-based providers. The sanctions may include, but are not limited to, the following:

- (1) House arrest as enforced by electronic monitoring or intensive supervision;
- (2) Restitution;
- (3) Community service;

(4) Short-term detention in either a staffed or physically secure facility provided by the community-based provider or other licensed subcontractor; and

(5) Mandatory parental participation in either therapeutic or sanction programs enforced, if necessary, by contempt sanctions.

(b) The Director of the Division of Youth Services shall ensure that criteria are established to ensure the maximum use of resources, in each judicial district, to make this program available to as many juveniles as possible. To the extent resources are available, a community-based sanction may be used for the following juvenile offenders and circumstances:

(1) Offenses not involving violence;

(2) Failure to comply with the terms of the aftercare plan;

(3) Contempt of court for failure to comply with any valid court order; and

(4) Revocation of probation.

(c) Nothing in this section requires the division to provide all the sanctions listed in this section, but simply to ensure that each judicial district has in place a continuum of graduated community-based sanctions and that those sanctions are available for as many juvenile offenders as possible.

(d) The division shall add to the community-based provider contracts without further request for proposals, any and all funds specifically appropriated to implement this subchapter and shall ensure that those funds are spent exclusively to implement and support community-based sanction programs.

History. Acts 1997, No. 710, § 2.

9-28-703. Sanctions — Position.

(a) The Division of Youth Services may impose any community-based sanction on a juvenile in its custody or who is in aftercare as a result of having been committed.

(b) The court may impose community-based sanctions as an original disposition, revocation of probation, or as a contempt sanction.

(c) The community-based provider may not independently impose the community-based sanctions.

History. Acts 1997, No. 710, § 3.

9-28-704. Contracts with community-based providers.

(a) Each new professional or consultant service contract over twenty-five thousand dollars (\$25,000) of the Division of Youth Services with a community-based provider shall be filed for review with the Legislative Council or the Joint Budget Committee if the General Assembly is in session at least thirty (30) days before the execution date of the contract.

(b) Before a professional or consultant service contract with a community-based provider is modified or amended, the division shall:

(1) Notify the community-based provider of the proposed modification or amendment at least forty-five (45) days before the contract modification or amendment is executed, unless notice is waived by the community-based provider in writing;

(2) Post a notification of the proposed modification or amendment on the website of the Department of Human Services, on the section of the website related to procurement, at least forty-five (45) days before the execution date of the contract;

(3) Provide the community-based provider an opportunity to comment on the proposed modification or amendment; and

(4) File the proposed contract modification or amendment and all community-based provider comments submitted with the Legislative Council or to the Joint Budget Committee if the General Assembly is in session at least thirty (30) days before the contract modification or amendment is executed.

History. Acts 2013, No. 321, § 1; 2013, No. 1258, § 1.

SUBCHAPTER 8 — HOUSING FOR JUVENILE OFFENDERS BETWEEN THE AGES OF EIGHTEEN AND TWENTY-ONE

SECTION.

9-28-801. Facility to house older juvenile offenders established.

9-28-801. Facility to house older juvenile offenders established.

(a) The Division of Youth Services shall establish a separate facility to house offenders between the ages of eighteen (18) and twenty-one (21) who have been committed to the division.

(b) The facility shall be in operation by July 1, 2000, and shall be contingent upon funding.

History. Acts 1999, No. 1272, § 1.

SUBCHAPTER 9 — FOSTER PARENT SUPPORT ACT

SECTION.

9-28-901. Title.

9-28-902. Findings.

SECTION.

9-28-903. Foster parent support.

Effective Dates. Acts 2009, No. 758, § 29, provided: "Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Mal-

treatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective." The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

9-28-901. Title.

This subchapter shall be known and may be cited as the “Foster Parent Support Act of 2007”.

History. Acts 2007, No. 725, § 1.

9-28-902. Findings.

(a) The General Assembly finds that foster parents providing care for children who are in the custody of the Department of Human Services play an integral, indispensable, and vital role in the state’s effort to care for dependent children displaced from their homes. The General Assembly further finds that it is in the best interests of Arkansas’s child welfare system to acknowledge foster parents as active and participating members of this system and to support them.

(b) When policies regarding foster care and adoptive placement are developed by the Division of Children and Family Services and other child placement agencies, those policies shall be designed to support and aid foster parents.

History. Acts 2007, No. 725, § 1.

9-28-903. Foster parent support.

Foster parents should be supported in the following manner:

(1) Treated by the Division of Children and Family Services and other partners in the care of abused and neglected children with consideration, dignity, respect, and trust as a primary caregiver for foster children, including respect for the family values and routines of the foster parent;

(2) Considered to be an integral member of the professional team caring for children in foster care;

(3) Confidentiality regarding personal issues as provided by law and to be free from discrimination based on religion, race, color, creed, national origin, age, marital status, or physical handicap in matters concerning licensing approval;

(4)(A) Provided training that will enhance the skills and ability to cope as foster parents.

(B) The training shall include both standardized pre-service training and continuing education at least annually and at appropriate intervals, including without limitation the following purposes:

(i) To meet mutually assessed needs of the children in foster care;

(ii) To inform foster parents of their responsibilities and opportunities as foster parents;

(iii) To assist in the understanding of and dealing with family loss and separation when a child in foster care is placed, as well as when a foster child leaves the foster parent’s home;

(iv) To be informed of and have access to in a timely manner and at least annually any changes in applicable laws, guidelines, policies, and procedures that may impact the role of foster parents;

(v) To receive specific training on investigations of alleged child abuse or neglect in a foster home. The training shall include the rights of a foster parent during an investigation; and

(vi) To receive information about and have access to local and statewide support groups, including without limitation local and statewide foster parent associations;

(5) Provided contact information for the appropriate staff of the child placement agency in order to receive information and assistance to access supportive services for children in the foster parent's care;

(6) Granted access to services from the Division of Children and Family Services/Child Placement Agency twenty-four (24) hours a day, seven (7) days a week for assistance;

(7) Provided all information regarding the foster child that will impact the foster parent's home or family life in order to provide assurance of safety of the foster parent's family during the care of the child in foster care;

(8) Provided full disclosure of all medical, psychological, and behavioral issues of children in the foster parent's care;

(9)(A) Informed prior to placement of all information regarding the child's behavior, background, health history, or other issues relative to the child that may jeopardize the health and safety of the foster family or alter the manner in which foster care should be provided.

(B) In an emergency situation, the child placement agency shall provide information as soon as it is available;

(10) Prior to placement, enabled to review and discuss written information concerning the child and to assist in determining if the child is a proper placement for the foster family;

(11) The ability to refuse placement of a child in the foster home or to request, upon reasonable notice, the removal of a child from the foster home without fear of reprisal or any adverse effect on being assigned any future foster child or adoptive placements;

(12) Receipt of any information through the Division of Children and Family Services/Child Placement Agency regarding the number of times a child in foster care has been moved and the reasons for those moves and, upon request and within legal guidelines or as provided by statute, to receive the names and phone numbers of the previous foster parents if the previous foster parents authorize such release;

(13) Provided a clear, written explanation of the placement agency's plan concerning the placement of a child in the foster parent's home and to receive at any time during the placement any additional or necessary information that is relevant to the case of the child, including any subsequent revisions to the case plan on a timely basis;

(14)(A) Permitted meaningful participation in the development of the case plan for the child in foster care in his or her home.

(B) To accomplish this goal, the foster parents shall have:

(i) The opportunity to discuss the plan of the child in foster care with the case manager and the child welfare team and be provided with a written copy of the individual service and treatment plan

concerning the child in foster care in the foster parent's home, as well as a reasonable notification of any changes to that plan;

(ii) The opportunity to participate in the planning of visitation with the child in foster care and his or her birth family;

(iii) The opportunity to participate in the case planning and decision-making process with the Division of Children and Family Services/Child Placement Agency regarding the child in foster care;

(iv) The opportunity to provide input concerning the plan of care for the child and to have that input considered by the Division of Children and Family Services/Child Placement Agency;

(v) The opportunity to communicate for the purpose of participating in the case planning for the child in foster care with other professionals who work with the child in foster care within the context of the professional team, including without limitation therapists, physicians, and teachers;

(vi) The opportunity to be notified of all scheduled meetings and staffings concerning the child in foster care in order to actively participate in the case planning and decision-making process regarding the child in foster care, including individual service planning meetings, administrative case reviews, multidisciplinary staffings, and individual educational planning meetings;

(vii) The opportunity to be given, in a timely and consistent manner, any information a caseworker has regarding the child in foster care and the family of the child in foster care that is pertinent to the care and needs of the child in foster care and to the making of a permanency plan for the child in foster care; and

(viii) The opportunity to be given reasonable explanatory written notice of any changes in a case plan for the child in foster care, plans to terminate the placement of the child with the foster parent within fourteen (14) days, and the reasons for the change or termination in placement except in an immediate response to a child maltreatment investigation involving the foster home. The notice shall be waived only as provided for by law;

(15) Afforded the opportunity to be notified in advance by the division or the court of any hearing or review in which the case plan or permanency of the child in foster care is an issue, including periodic reviews held by the court, permanency hearings, and motions to extend custody;

(16) Afforded the opportunity to be notified and to be heard during any court proceeding regarding the child in foster care in the foster parent's home and to be informed of decisions made by the courts or the child welfare agency concerning the child in foster care;

(17) Afforded the opportunity to be considered as a permanency option for a foster child in their home and if in the best interest of the foster child, and to receive assistance in dealing with family loss and separation when a child in foster care leaves the foster parent's home;

(18) Granted the following considerations:

(A) Consideration when appropriate, as a preferential placement option when a child in foster care who was formerly placed with the foster parents has reentered the foster care system;

(B) Consideration for adoption when a child in foster care who has been placed in the foster home for a period of at least twelve (12) months becomes eligible for adoption to the extent it is in the best interest of the child in foster care; and

(C) Allowed to maintain contact with the child in foster care after the child leaves the foster home, unless the child in foster care, a birth parent, the division who retains custody of the child in foster care, or other foster or adoptive parent refuses such contact;

(19) Provided with a reasonable plan for relief from the role of foster parenting through the use of respite care services;

(20) Provided timely and adequate financial reimbursement according to the agreement between the foster parents and the Division of Children and Family Services/Child Placement Agency;

(21) Provided evaluation and feedback on his or her role as a foster parent;

(22) In the event of an alleged violation of policies, given the opportunity:

(A) To request and receive a fair and impartial review regarding decisions that affect approval and retention or placement of a foster child in the foster parent's home;

(B) To be provided a fair, timely, and impartial investigation of complaints concerning the operation of the foster home;

(C) To be provided an explanation of a corrective action plan or policy violation relating to the foster parents;

(D) To have child maltreatment allegations investigated in accordance with the Child Maltreatment Act, § 12-18-101 et seq. and any removal of a child in foster care shall be pursuant to division policies and procedures; and

(E) To request and receive a review of decisions that affect approval of the foster home; and

(23) Provided information on policies and procedures for reporting of misconduct by division employees, service providers, or contractors, confidential handling of the reports, and investigation of the reports.

History. Acts 2007, No. 725, § 1; 2009, No. 758, § 17.

SUBCHAPTER 10 — SAFEGUARDS FOR CHILDREN IN FOSTER CARE ACT

SECTION.

9-28-1001. Title.

9-28-1002. Findings and purpose.

SECTION.

9-28-1003. Safeguards for children in foster care.

9-28-1001. Title.

This subchapter shall be known and may be cited as the “Safeguards for Children in Foster Care Act”.

History. Acts 2007, No. 725, § 2.

9-28-1002. Findings and purpose.

(a) The General Assembly acknowledges that society has a responsibility, along with foster parents and the Department of Human Services, for the well-being of children in foster care.

(b) Every child in foster care is endowed with the opportunities inherently belonging to all children.

History. Acts 2007, No. 725, § 2.

9-28-1003. Safeguards for children in foster care.

(a) Special safeguards, resources, and care should be provided to children involved in dependency-neglect cases who are in foster care or in an out-of-home placement because of the temporary or permanent separation from parents.

(b) A child in foster care in the State of Arkansas shall be entitled to the following:

- (1) To be cherished by a family of his or her own;
- (2) To be nurtured by foster parents who have been selected to meet his or her individual needs;
- (3) To be heard and involved with the decisions of his or her life;
- (4) To have complete information and direct answers to his or her questions about choices, services, and decisions;
- (5) To be informed about and have involvement when appropriate with his or her birth family and siblings;
- (6) To have reasonable access to his or her caseworker or a person in the Department of Human Services who can make decisions on his or her behalf;
- (7) To express his or her opinion and have it treated respectfully;
- (8) To request support and services that he or she needs;
- (9) To have individualized care and attention;
- (10) To have ongoing contact with significant people in his or her life, such as teachers, friends, personal support, and relatives;
- (11) To be notified of changes impacting his or her permanence, safety, stability, or well-being;
- (12) To have a stable, appropriate placement if he or she is placed in foster care;
- (13) To receive free appropriate education, training, and career guidance to prepare him or her for a useful and satisfying life;
- (14) To receive preparation for citizenship and parenthood through interaction with foster parents and other adults who are consistent role models;

(15) To have reasonable access to and be represented by an attorney ad litem in all juvenile judicial proceedings so that his or her best interests are represented;

(16) To receive quality child welfare services;

(17) To have a plan for his or her future and the support needed to accomplish it;

(18) To receive a copy of his or her case record upon exiting foster care;

(19) To be placed in the custody or foster home of relatives, if appropriate, provided the relative caregiver meets all relevant child protection standards; and

(20) To be cared for without regard to race, gender, religion, or disability.

(c) Sibling relationships are recognized to be unique and separate from the parent-child bond due to the similar history, heritage, culture, and biology of the siblings; and sibling separation is a significant and distinct loss that must be repaired by frequent and regular contact, continuity, and stability during a child's placement in foster care or an out-of-home placement; and each child has the right to know and be actively involved in his or her sibling's lives, absent extraordinary circumstances.

(d) In addition to the safeguards identified under subsection (b) of this section, siblings in foster care or in an out-of-home placement in this state are entitled to the following unless a court specifically finds that it is not in the best interest of the child:

(1) To live together in the same placement;

(2) To be separated only after:

(A) An assessment by a mental health professional determines that placement of the siblings together would be detrimental to the health, safety, or well-being of one (1) or more of the juveniles; or

(B) The department presents evidence to the court that there are no available relevant placements near the county where the juvenile resided before entering care;

(3) If separated, to be placed in close proximity to siblings in order to facilitate frequent and meaningful contact;

(4) If separated, to have visitation with all siblings that shall be:

(A) Regular and consistent;

(B) Include face-to-face meetings or alternate methods of communication at least one (1) time per week when possible; and

(C) Outlined in the case plan and approved by the court;

(5) To be actively involved in each sibling's life and share celebrations including birthdays, holidays, graduations, and meaningful milestones;

(6) To attend extracurricular events of each sibling, including without limitation athletic events, musical performances, scouting ceremonies, and church events;

(7) To be included in case plan staffing decisions and permanency planning decisions regarding siblings;

- (8) To be informed of the expectations for continued contact in the event that a sibling is placed or adopted separately from the sibling;
 - (9) To be notified of a change of placement for a sibling;
 - (10) To be informed when a sibling is being discharged from foster care;
 - (11) If a sibling leaves care, to be allowed to maintain contact with a sibling who remains in an out-of-home placement;
 - (12) To be supported in efforts to maintain relationships with siblings who are not in care or have been adopted or placed in permanent custody or guardianship separately from the child;
 - (13) To not have visitation or contact with a sibling withheld as a behavioral consequence unless there are documented safety concerns; and
 - (14) If separated, to have the sibling’s case reviewed by the court at least one (1) time every ninety (90) days for an assessment of the separation and to determine whether there has been a reasonable effort to reunite the siblings and to allow contact between the siblings consistent with this section.
- (e) A minor who is the custodial parent of one (1) or more children and who is placed in foster care shall be placed in the same placement as the child unless the court has adjudicated the child or children of the minor parent to be dependent-neglected and the court finds that it is not in the best interest of the child or children to be placed in the same placement as the minor parent.

History. Acts 2007, No. 725, § 2; 2015, No. 1017, §§ 13, 14. neglect cases who are” and inserted “or in an out-of-home placement”; and added (c) through (e).

Amendments. The 2015 amendment, in (a), inserted “involved in dependency-

CASE NOTES

Standing. the termination of her grandson’s parental rights, the great-grandmother had no legal rights as the child’s great-grandmother. Stricklin v. Ark. Dep’t of Human Servs., 2017 Ark. App. 441, 528 S.W.3d 321 (2017).

Great-grandmother had no right to assert rights under this section where the child’s siblings were not in foster care, the great-grandmother was neither a party to the dependency-neglect case nor the child’s guardian or custodian, and due to

SUBCHAPTER 11 — ARKANSAS COALITION FOR JUVENILE JUSTICE BOARD

[Repealed.]

SECTION.
9-28-1101 — 9-28-1104. [Repealed.]

9-28-1101 — 9-28-1104. [Repealed.]

Publisher’s Notes. This subchapter, concerning the Arkansas Coalition for Juvenile Justice Board, was repealed by Acts 2019, No. 938, § 1, effective July 24, 2019. The subchapter was derived from the following sources:

9-28-1101. Acts 2013, No. 1513, § 1;
2017, No. 540, § 8.
9-28-1102. Acts 2013, No. 1513, § 1.

9-28-1103. Acts 2013, No. 1513, § 1.
9-28-1104. Acts 2013, No. 1513, § 1.

SUBCHAPTER 12 — YOUTH JUSTICE REFORM BOARD

SECTION.

9-28-1201. Youth Justice Reform Board
— Creation — Member-
ship.
9-28-1202. Powers and duties — Defini-
tions.

SECTION.

9-28-1203. Savings in state costs realized
from reduction in number
of secure out-of-home
placements.

A.C.R.C. Notes. Acts 2015, No. 1010, § 1, provided: “Legislative findings and intent.

“(a) The General Assembly finds that:

“(1) When effective community-based services are not available as an alternative to incarceration, the results are the secure confinement of youths who pose little or no threat to public safety;

“(2) When effective community-based alternatives are in place, use of confinement and commitments to the Division of Youth Services of the Department of Human Services can be reduced with no compromise of public safety; and

“(3) The state can realize significant fiscal savings, while positively impacting the lives of youthful offenders, by encouraging and investing in the use of effective community-based alternatives, and by reserving the use of state commitments and secure confinement for youthful offenders who pose a serious risk to public safety.

“(b) The purpose of this act is to establish a mandate for the provision of services to reduce youth incarceration, and to provide oversight and accountability for the effectiveness of commitment reduction

services to the state and to stakeholders in the juvenile justice system.”

Effective Dates. Acts 2019, No. 189, § 15: July 1, 2020.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

9-28-1201. Youth Justice Reform Board — Creation — Membership.

(a) To ensure statewide accountability for the delivery of youth services consistent with this subchapter, the Division of Youth Services shall create the Youth Justice Reform Board no later than sixty (60) days following July 22, 2015.

(b)(1) Except for a member who is appointed from the General Assembly, the members of the Youth Justice Reform Board shall be

selected by the Director of the Division of Youth Services for a single four-year term, with appointments being approved by the Governor.

(2)(A) Each member of the Youth Justice Reform Board who is a member of the Senate shall be appointed by and shall serve at the pleasure of the President Pro Tempore of the Senate.

(B) Each member of the Youth Justice Reform Board who is a member of the House of Representatives shall be appointed by and shall serve at the pleasure of the Speaker of the House of Representatives.

(3) The Youth Justice Reform Board shall be composed of the following members who have demonstrated a commitment to improving youth services, with individuals selected from key stakeholder groups, including without limitation:

(A) Juvenile justice system-involved families;

(B) Youths who have received or are receiving services delivered by the Division of Youth Services;

(C) Representatives from the Division of Elementary and Secondary Education, the Division of Workforce Services, the Division of Children and Family Services, and the Division of Aging, Adult, and Behavioral Health Services;

(D) Youth services providers;

(E) Circuit court judges who routinely preside over juvenile cases;

(F) The Administrative Office of the Courts;

(G) Prosecuting attorneys or deputy prosecuting attorneys who are routinely involved in juvenile delinquency cases;

(H) Public defenders or deputy public defenders who are routinely involved in juvenile delinquency cases;

(I) Advocacy groups, including the designated state protection and advocacy group for individuals with disabilities, and other research and advocacy groups with established leadership for children and families in Arkansas;

(J) The juvenile ombudsman of the Juvenile Ombudsman Division of the Arkansas Public Defender Commission;

(K) Members of the Arkansas Coalition for Juvenile Justice Board [abolished];

(L) Members of the Juvenile Justice Reform Subcommittee of the Arkansas Supreme Court Commission on Children, Youth and Families;

(M) Experts in adolescent development;

(N) Two (2) members of the Senate;

(O) Two (2) members of the House of Representatives; and

(P) Juvenile court staff or program representatives.

(c) The Governor shall appoint the Chair of the Youth Justice Reform Board.

(d) The Youth Justice Reform Board shall meet at least quarterly.

(e) The Division of Youth Services shall provide administrative support necessary for the Youth Justice Reform Board to perform its duties.

(f) The Youth Justice Reform Board shall cease operation by June 30, 2021.

History. Acts 2015, No. 1010, § 3; 2017, No. 913, § 28; 2019, No. 910, §§ 2207, 5144; 2019, No. 931, § 1.

Publisher's Notes. Acts 2019, No. 938 repealed § 9-28-1101, which created the Arkansas Coalition for Juvenile Justice Board, referred to in subsection (b) of this section.

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" in (b)(2)(C) [now (b)(3)(C)].

The 2019 amendment by No. 910 substituted "Division of Elementary and Secondary Education, Division of Workforce Services" for "Department of Education,

Department of Workforce Services" in (b)(2)(C) [now (b)(3)(C)].

The 2019 amendment by No. 931 in (b)(1), substituted "Except for a member who is appointed from the General Assembly, the members" for "The members" and inserted "being"; inserted (b)(2) and redesignated former (b)(2) as (b)(3); substituted "composed of the following members" for "composed of a maximum of twenty-one (21) representatives" in the introductory language of (b)(3); added (b)(3)(N) through (b)(3)(P); substituted "The Governor shall appoint the Chair" for "The director, or his or her designee, shall serve as Chair" in (c); and substituted "June 30, 2021" for "June 30, 2019" in (f).

9-28-1202. Powers and duties — Definitions.

(a) As used in this section and § 9-28-1203:

(1) "Proven effective community-based alternatives" means interventions, supports, programs, and practices that are recognized as best practices based on rigorous evaluation and research, or are based on a clear and well-articulated theory or conceptual framework for delinquency prevention. These include, without limitation, community-based services that are currently provided or have been provided and have been demonstrated to be effective in reducing the number of secure out-of-home placements and institutional placement of youthful offenders; and

(2) "Secure out-of-home placement" means placement in a public or private residential facility that includes construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody and used for the placement and disposition of a juvenile adjudicated to be delinquent.

(b) The Youth Justice Reform Board shall:

(1) Assist the Division of Youth Services in determining the method for calculating savings realized from reduced state commitments and in educating the public about the plan developed to reduce reliance on secure out-of-home placements; and

(2) Make annual reports to the division, the Governor, and the General Assembly regarding system reform and improvements needed to implement the goals and purposes of this subchapter.

(c) To provide needed expertise, the board may seek outside technical assistance to aid its work.

History. Acts 2015, No. 1010, § 3; 2019, No. 189, § 13.

A.C.R.C. Notes. Acts 2019, No. 189,

§ 1, provided: "This act shall be known and may be cited as the 'Restoring Arkansas Families Act'."

Acts 2019, No. 189, § 2, provided: “Legislative findings and intent.

“(a) The General Assembly finds:

“(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

“(2) Stakeholder groups represented on the board include:

“(A) Families and youth involved in the juvenile system;

“(B) The Department of Education;

“(C) The Department of Workforce Services;

“(D) The Department of Human Services;

“(E) Youth services providers;

“(F) Juvenile judges;

“(G) The Administrative Office of the Courts;

“(H) Prosecuting attorneys;

“(I) Public defenders;

“(J) Youth advocates; and

“(K) Experts in adolescent development; and

“(3) In 2017, the board worked with the Arkansas Supreme Court Commission on Children, Youth, and Families to identify concerns and priorities for legislative action.

“(b) The purpose of this act is to:

“(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

“(2) Reduce the number of secure out-of-home placements;

“(3) Redirect funding from secure residential facilities to evidence-based community services;

“(4) Equitably allocate services in and across each judicial district;

“(5) Enhance treatment for youth committed to the Division of Youth Services; and

“(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers.”

Amendments. The 2019 amendment added “and § 9-28-1203” in the introductory language of (a); substituted “out-of-home placements” or “out-of-home placement” for “confinement” throughout the section; inserted the first occurrence of “community-based” and “the number of” in (a)(1); substituted “placement in” for “confinement in” in (a)(2); deleted (a)(3); in (b)(1), deleted “of the Department of Human Services” following “Division of Youth Services”; deleted (b)(2)(B) and (b)(2)(C); and redesignated former (b)(2)(A) as (b)(2).

9-28-1203. Savings in state costs realized from reduction in number of secure out-of-home placements.

(a)(1) The Division of Youth Services shall establish a method to calculate state costs saved that are realized from a reduction in the number of secure out-of-home placements.

(2)(A) The division shall develop a reinvestment plan to redirect savings realized from a reduction in the number of secure out-of-home placements.

(B) The division shall complete the development of the reinvestment plan under subdivision (a)(2)(A) of this section by July 1, 2020.

(C) The reinvestment plan developed by the division shall:

(i) Support the legislative intent and purposes of this subchapter by redirecting savings in state costs that are realized from a reduction in the number of secure out-of-home placements;

(ii) Describe the methods and procedures to redirect savings in state costs from a reduction in the number of secure out-of-home placements through the reallocation of resources under § 19-4-522;

(iii) Describe the method to calculate savings in state costs from a reduction in the number of secure out-of-home placements;

(iv) Describe criteria to redirect savings in state costs to implement juvenile justice reform initiatives through evidence-based programs provided by community-based providers, including without limitation requirements for:

- (a) Applications;
- (b) Awards;
- (c) Performance measures; and
- (d) Monitoring processes; and

(v) Describe the methods and procedures to be used to monitor the use of redirected savings in state costs.

(b) The division shall include in its annual report:

(1) A summary of the data and method used to calculate savings in state costs that are realized from the reduction in the number of secure out-of-home placements;

(2) The total amount of savings generated from the reduction in the number of secure out-of-home placements;

(3) The impact of reductions in secure out-of-home placements and the redirection of savings in state costs from the reduction in the number of secure out-of-home placements on public safety and outcomes for youths and families; and

(4) The overall residential budget and present and future facility needs.

(c) The General Assembly shall consider the summary of savings in making appropriations to the division to allow for the support and expansion of proven effective community-based alternatives to secure out-of-home placements for youths who otherwise would have been committed to the division.

History. Acts 2015, No. 1010, § 3; 2019, No. 189, § 14.

A.C.R.C. Notes. Acts 2019, No. 189, § 1, provided: "This act shall be known and may be cited as the 'Restoring Arkansas Families Act'."

Acts 2019, No. 189, § 2, provided: "Legislative findings and intent.

"(a) The General Assembly finds:

"(1) The Youth Justice Reform Board was established by Acts 2015, No. 1010, bringing together stakeholders from across the state to develop a series of recommendations for youth justice reform in Arkansas;

"(2) Stakeholder groups represented on the board include:

"(A) Families and youth involved in the juvenile system;

"(B) The Department of Education;

"(C) The Department of Workforce Services;

"(D) The Department of Human Services;

"(E) Youth services providers;

"(F) Juvenile judges;

"(G) The Administrative Office of the Courts;

"(H) Prosecuting attorneys;

"(I) Public defenders;

"(J) Youth advocates; and

"(K) Experts in adolescent development; and

"(3) In 2017, the board worked with the Arkansas Supreme Court Commission on Children, Youth, and Families to identify concerns and priorities for legislative action.

"(b) The purpose of this act is to:

"(1) Maintain public safety and improve outcomes for Arkansas youth and families involved in the juvenile justice system through validated risk assessments;

"(2) Reduce the number of secure out-of-home placements;

"(3) Redirect funding from secure residential facilities to evidence-based community services;

“(4) Equitably allocate services in and across each judicial district;

“(5) Enhance treatment for youth committed to the Division of Youth Services; and

“(6) Serve youth and families through evidence-based programs selected through a collaboration between the Department of Human Services, the judiciary, and community-based providers.”

Amendments. The 2019 amendment substituted “Savings in state costs realized from reduction in number of secure out-of-home placements” for “Summary of savings” in the section heading; rewrote (a) and (b); and substituted “out-of-home placements” for “confinement” in (c).

CHAPTER 29
INTERSTATE COMPACTS

SUBCHAPTER.

- 1. INTERSTATE COMPACT ON JUVENILES. [REPEALED.]
- 2. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN.
- 3. INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE.
- 4. INTERSTATE COMPACT FOR JUVENILES.

SUBCHAPTER 1 — INTERSTATE COMPACT ON JUVENILES

[Repealed.]

SECTION.

9-29-101 — 9-29-108. [Repealed.]

Publisher’s Notes. Subchapter 4 of Title 9, Chapter 29, the Interstate Compact for Juveniles, shall become effective upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment of the compact into law by the 35th jurisdiction. Upon that contingency being met, Sub-

chapter 1 of Title 9, Chapter 29, is repealed.

The contingency was met as of August 26, 2008, when the 35th state adopted the Interstate Compact for Juveniles. As of September 11, 2009, five other states have adopted the compact, and legislation to adopt the compact was pending in two other states.

9-29-101 — 9-29-108. [Repealed.]

Publisher’s Notes. Former subchapter 1, concerning the Interstate Compact for Juveniles, was repealed on August 26, 2008, when the contingency in Acts 2005, No. 1530, §§ 3 and 4, was met. The subchapter was derived from the following sources:

- 9-29-101. Acts 1957, No. 155, § 1; A.S.A. 1947, § 45-301.
- 9-29-102. Acts 1957, No. 155, § 2; A.S.A. 1947, § 45-302.
- 9-29-103. Acts 1957, No. 155, § 3;

A.S.A. 1947, § 45-303.

9-29-104. Acts 1957, No. 155, § 4; A.S.A. 1947, § 45-304.

9-29-105. Acts 1957, No. 155, § 5; A.S.A. 1947, § 45-305.

9-29-106. Acts 1957, No. 155, § 6; A.S.A. 1947, § 45-306.

9-29-107. Acts 1957, No. 155, § 7; A.S.A. 1947, § 45-307.

9-29-108. Acts 1987, No. 469, § 1; 1987, No. 585, § 1.

SUBCHAPTER 2 — INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

SECTION.

9-29-201. Text of Compact.

9-29-202. Role of Governor — Appointment of compact administrator.

9-29-203. Enforcement.

9-29-204. Secretary of the Department of Human Services to determine when to discharge child.

SECTION.

9-29-205. Agreements with other states pursuant to the compact.

9-29-206. Agreements concerning visitation or supervision.

9-29-207. Courts authorized to place children in other states pursuant to this compact.

9-29-208. Financial responsibility for placed children.

Cross References. Adoption in general, § 9-9-101 et seq.

Revised Uniform Adoption Act, § 9-9-201 et seq.

Effective Dates. Acts 1979, No. 677, § 9: July 1, 1979.

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections

of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

CASE NOTES

Applicability.

Subsection (a) of Article III of this compact makes it clear that it is meant to deal with children who are sent from a sending state into a receiving state for placement in foster care or as a preliminary to a

possible adoption; it is not applicable to children in temporary custody of the state while custody between competing parents is determined. *Nance v. Ark. Dep't of Human Servs.*, 316 Ark. 43, 870 S.W.2d 721 (1994).

9-29-201. Text of Compact.

The Interstate Compact on the Placement of Children is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I

Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangement for the care of children will be promoted.

ARTICLE II

Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof, a court of a party state, a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(c) "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons;

(d) "Placement" means:

(1) The arrangement for the care of a child in a family, free or boarding home or in a child-caring agency or institution but does not include any institution caring for individuals with mental illness, intellectual disabilities, or epilepsy or any institution primarily educational in character, and any hospital or other medical facility; and

(2) The arrangement for the care of a child in the home of his or her parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII(a) of the compact.

(e)(1) "Foster care" means the care of a child on a twenty-four-hour-a-day basis away from the home of the child's parent or parents. The care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity.

(2) In addition, if twenty-four-hour-a-day care is provided by the child's parents by reason of a court ordered placement and not by virtue of the parent-child relationship, the care is foster care.

(3) "Foster care" shall not include placement in a residential facility by a parent if a child welfare agency or court is not involved with the parent or child through an open case or investigation.

(f)(1) "Priority placement" means whenever a court, upon request or on its own motion or where court approval is required, determines that a proposed priority placement of a child from one (1) state into another state is necessary because placement is with a relative and:

(A) The child is under four (4) years of age, including older siblings sought to be placed with the same proposed placement;

(B) The child is in an emergency placement;

(C) The court finds that the child has a substantial relationship with the proposed placement resource; or

(D) There is an unexpected dependency due to a sudden or recent incarceration, incapacitation, or death of a parent or guardian.

(2) The state agency has thirty (30) days to complete a request for a priority placement.

(3) Requests for placement shall not be expedited or given priority except as outlined in this subsection.

(g) "Home study" means a written report that is obtained after an investigation of a household and that may include a criminal background check, including a fingerprint-based criminal background check in the national crime information database and a local criminal background check on any person in the household sixteen (16) years of age and older.

ARTICLE III

Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child;

(2) The identity and address or addresses of the parents or legal guardian;

(3) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

(e) (1) If the home study is denied, the sending state agency shall present the home study to the juvenile division judge in the sending state.

(2) The sending state juvenile division judge shall review the home study and make specific written findings of fact regarding the concerns outlined in the home study.

(3) If the sending state juvenile division court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement.

ARTICLE IV

Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V

Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have

financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one (1) or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI

Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII

Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII

Limitations

This compact shall not apply to:

- (a)(1) Except as provided under subdivision (a)(2) of this section, the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or

his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(2) If the guardianship is established as a prelude to a non-relative adoption or to avoid compliance with this compact, the guardian shall comply with this compact.

(b) Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX

Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X

Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History. Acts 1979, No. 677, § 1; A.S.A. § 15; 2007, No. 372, § 1; 2013, No. 751, 1947, § 83-1201; Acts 2003, No. 1809, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

CASE NOTES

Applicability.

Article III of this compact made it clear that it was meant to deal with children who were sent from a sending state into a receiving state for placement in foster care or as a preliminary to a possible adoption. Ark. Dep't of Human Servs. v. Huff, 347 Ark. 553, 65 S.W.3d 880 (2002).

Statute, when read as a whole, was intended only to govern placing children in substitute arrangements for parental care, such as foster care or adoption; it did not apply when a child was returned by the sending state to a natural parent residing in another state. Ark. Dep't of

Human Servs. v. Huff, 347 Ark. 553, 65 S.W.3d 880 (2002).

In a case involving the custody of an Oklahoma child after his mother left him unattended in a car in Arkansas, written authorization from an Oklahoma agency was not required under Article III of this compact prior to placement with the paternal grandparents in Oklahoma because the case did not involve foster care or adoption; moreover, it did not involve the interstate placement of the child since the child had been in the custody of the grandparents prior to the incident. Ark. Dep't of Health & Human Servs. v. Jones, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

9-29-202. Role of Governor — Appointment of compact administrator.

As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the Governor. The Governor is authorized to appoint a compact administrator in accordance with the terms of Article VII.

History. Acts 1979, No. 677, § 8; A.S.A. 1947, § 83-1208.

9-29-203. Enforcement.

(a) The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children, with reference to this state, means the Department of Human Services which shall receive and act with reference to notices required by Article III.

(b) The department shall take appropriate action in the appropriate court as may be necessary to enforce the provisions of this compact and to ensure that the placement of any child shall be for the best interest of that child.

History. Acts 1979, No. 677, § 3; A.S.A. 1947, § 83-1203.

9-29-204. Secretary of the Department of Human Services to determine when to discharge child.

As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiv-

ing state” with reference to this state means the Secretary of the Department of Human Services.

History. Acts 1979, No. 677, § 4; A.S.A. 1947, § 83-1204; Acts 2019, No. 910, § 5145.

Amendments. The 2019 amendment substituted “Secretary of the Department of Human Services” for “Director of the Department of Human Services” in the section heading and in the section.

9-29-205. Agreements with other states pursuant to the compact.

The officers and agencies of this state and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states under paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision, or agency thereof shall not be binding unless it has the approval in writing of the Secretary of the Department of Human Services in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History. Acts 1979, No. 677, § 5; A.S.A. 1947, § 83-1205; Acts 2019, No. 910, § 5146.

Amendments. The 2019 amendment substituted “Secretary of the Department of Human Services” for “Director of the Department of Human Services” in the second sentence; and made a stylistic change.

9-29-206. Agreements concerning visitation or supervision.

Any requirements for visitation, inspection or supervision of children, homes, institutions, or other agencies in another party state which may apply under this subchapter or as required by any court of record of this state shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

History. Acts 1979, No. 677, § 6; A.S.A. 1947, § 83-1206.

9-29-207. Courts authorized to place children in other states pursuant to this compact.

Any court having jurisdiction to place delinquent children may place such a child in an institution in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

History. Acts 1979, No. 677, § 7; A.S.A. 1947, § 83-1207.

9-29-208. Financial responsibility for placed children.

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Arkansas laws fixing responsibility for the support of children may also be invoked.

History. Acts 1979, No. 677, § 2; A.S.A. 1947, § 83-1202.

SUBCHAPTER 3 — INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

SECTION.

9-29-301. Interstate Compact on Adoption and Medical Assistance.

9-29-301. Interstate Compact on Adoption and Medical Assistance.

SECTION 1

It is the purpose and policy of the party states to cooperate with each other to assure that adoptive children for whom federally funded medical adoption assistance is desirable and necessary shall continue to receive such adoption assistance, including medical and other necessary services, when the adoptive parents move to other states or are residents of another state.

SECTION 2

Definitions

As used in this compact, unless the context clearly requires a different construction:

(a) "Child with special needs" means a minor who has not yet attained the age of eighteen (18) years where the State of Arkansas has determined that the child's mental or physical handicaps warrant the continuation of assistance pursuant to Title IV-E of the Social Security Act, for whom the following has been determined:

(1) That the child cannot or should not be returned to the home of his parents;

(2) That the child is a member of a minority or sibling group or other specific factors exist such as ethnic background, age, medical condition, or physical, mental, or emotional handicap because of which it is reasonable to conclude that such a child cannot be placed with adoptive parents without providing adoption assistance;

(3) That, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful effort to place the child with appropriate adoptive parents without providing adoption assistance payments.

(b) "Adoption assistance" means the payment or payments are made for maintenance of a child, which payment or payments are made or committed to be made pursuant to the Adoption Assistance Program established by the laws of the party state.

(c) "State" means a state in the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, or territory or possession of the United States.

(d) "Adoptions assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(e) "Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

(f) "Parents" means either the singular or plural of the word "parent".

SECTION 4

Medical Assistance

(a) Children for whom a party state is committed in accordance with the terms of an adoption assistance agreement to make adoption assistance payments are eligible for medical assistance during the entire period for which such payments are to be provided, or until the child reaches the age of eighteen (18) years, whichever comes first. Upon application therefor, the adoptive parents of a child on whose behalf a party state's duly constituted authorities have entered into an adoption assistance agreement, the adoptive parents shall receive a medical assistance identification made out in the child's name. The identification shall be issued by the medical assistance program of the resident state and shall entitle the child to the same benefits, pursuant to the same procedures, as any other child who is a resident of the state and covered by medical assistance, whether or not the adoptive parents are eligible for medical assistance.

(b) The identification shall bear no indication that an adoption assistance agreement with another state is the basis for issuance. However, if the identification is issued on account of an outstanding adoption assistance agreement to which another state is a signatory, the records of the issuing state and the adoption assistance state shall show the fact, shall contain a copy of the adoption assistance agreement and any amendment or replacement therefor, and all other pertinent information. The adoption assistance and medical assistance program of the adoption assistance state shall be notified of the identification issuance.

(c) A state which has issued a medical assistance identification pursuant to this compact, which identification is valid and currently in force, shall accept, process, and pay medical assistance claims thereon as on any other medical assistance to which its residents may be eligible or entitled.

(d) An adoption assistance state which provides medical services or benefits to children covered by its adoption assistance agreements, which services or benefits are not provided for those children under the medical assistance program of the residence state, may enter into cooperative arrangements with the residence state to facilitate the delivery and administration of such services and benefits. However, any such arrangements shall not be inconsistent with this compact nor shall they relieve the residence state of any obligation to provide medical assistance in accordance with its laws and this compact.

(e) A child whose residence is changed from one (1) party state to another party state shall be eligible for medical assistance under the medical assistance program of the new state medical assistance.

SECTION 5

Withdrawal from this compact shall be by written notice sent by the authority which executed it to the appropriate officials of all other party states, but no such notice shall take effect until one (1) year after it is given in accordance with the requirements of this paragraph. In the event any state withdraws from this compact, all adoption assistance agreements outstanding and to which a party state is signatory shall continue to have the effects given to them pursuant to this compact, until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreement involved shall continue to have all rights and obligations conferred or imposed by this compact and the withdrawing state shall continue to administer the compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

SECTION 6

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, persons, or circumstances held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

SECTION 7

All laws and parts of laws in conflict herewith are hereby repealed.

History. Acts 1985, No. 928, §§ 1, 2, 4-7; A.S.A. 1947, §§ 56-301 — 56-305.

Publisher's Notes. Acts 1985, No. 928 did not contain a Section 3.

U.S. Code. Title IV-E of the Social Security Act, referred to in this compact, is codified as 42 U.S.C. § 670 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

SUBCHAPTER 4 — INTERSTATE COMPACT FOR JUVENILES

SECTION.

9-29-401. Text of Compact.

A.C.R.C. Notes. Acts 2005, No. 1530, § 2, provided: "SUNSET CLAUSE. It is hereby found and determined by the General Assembly that if this Interstate Compact for Juveniles is not approved by the requisite number of states by January 1, 2010, then this act will become void as of that same date."

Effective Dates. Acts 2005, No. 1530, § 4: Apr. 5, 2005. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the children of the State of Arkansas that a compact is in place to ensure the smooth transition of their transportation among the states; that the effectiveness of this act is immediate for the health and safety of the children of the State of Arkansas; and that in the event of an extension of the legislative session beginning in January 2005, the delay in the effective date of this act could do irreparable harm to the children of this state, as

well as interfere with the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this bill being necessary for the best interest of the children of the State of Arkansas and other reasons shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Publisher's Notes. The contingency was met as of August 26, 2008, when the 35th state adopted the Interstate Compact for Juveniles. As of September 11, 2009, five other states have adopted the compact, and legislation to adopt the compact was pending in two other states.

9-29-401. Text of Compact.

The Interstate Compact for Juveniles is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form substantially as follows:

THE INTERSTATE COMPACT FOR JUVENILES

ARTICLE I

Purpose

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct non-compliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of

the compact with the Interstate Compact on the Placement of Children, the Interstate Commission for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II

Definitions

As used in this compact, unless the context clearly requires a different construction:

A. "By-laws" means: those by-laws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. "Compact Administrator" means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

C. "Compacting State" means: any state which has enacted the enabling legislation for this compact.

D. "Commissioner" means: the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. "Court" means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. "Deputy Compact Administrator" means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

G. "Interstate Commission" means: the Interstate Commission for Juveniles created by Article III of this compact.

H. "Juvenile" means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-Offender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. “Non-Compacting state” means: any state which has not enacted the enabling legislation for this compact.

J. “Probation or Parole” means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. “Rule” means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. “State” means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

ARTICLE III

Interstate Commission for Juveniles

A. The compacting states hereby create the “Interstate Commission for Juveniles.” The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Commission for Adult Offender Supervi-

sion, Interstate Compact on the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the by-laws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the by-laws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The by-laws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's by-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;
 2. Disclose matters specifically exempted from disclosure by statute;
 3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
 4. Involve accusing any person of a crime, or formally censuring any person;
 5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 6. Disclose investigative records compiled for law enforcement purposes;
 7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
 8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
 9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.
- J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.
- K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV

Powers and Duties of the Interstate Commission

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.
2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any by-laws adopted and rules promulgated by the Interstate Commission.

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the by-laws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices which shall be located within one or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and by-laws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the by-laws.

ARTICLE V

Organization and Operation of the Interstate Commission

Section A. By-laws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

- a. Establishing the fiscal year of the Interstate Commission;
- b. Establishing an executive committee and such other committees as may be necessary;
- c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;
- d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;
- e. Establishing the titles and responsibilities of the officers of the Interstate Commission;
- f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;
- g. Providing "start-up" rules for initial administration of the compact; and
- h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI

Rulemaking Functions of the Interstate Commission

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the "Model State Administrative Procedure Act," 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule's entire text stating the reason(s) for that proposed rule;
2. allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;
3. provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and
4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedure Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this act shall be null and void twelve months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state-of-emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII

Oversight, Enforcement and Dispute Resolution by the Interstate Commission

Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII

Finance

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate

annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX

The State Council

A. An Arkansas State Council for Interstate Juvenile Supervision is created. The state council shall consist of the following members:

1. One (1) nonelected representative of the legislative branch of government appointed by the Chair of the Senate Interim Committee on Children and Youth;

2. One (1) circuit court judge who, pursuant to Administrative Order No. 14, is assigned to hear cases filed pursuant to the Arkansas Juvenile Code, appointed by the Governor;

3. The Director of the Division of Youth Services of the Department of Human Services or his or her designee;

4. One (1) representative from a victim's group, appointed by the Governor;

5. One (1) juvenile probation officer, appointed by the Governor; and

6. The Director of the Division of Youth Services or his or her designee shall be the commissioner representing Arkansas on the Interstate Commission for Juveniles.

B. The Director of the Division of Youth Services or his or her designee shall be the compact administrator for Arkansas.

C. The state council shall provide advice, recommendations and advocacy concerning Arkansas' participation in interstate commission activities and the development of policies concerning operations and procedures of the compact within this state.

ARTICLE X

Compacting States, Effective Date and Amendment

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004 or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI

Withdrawal, Default, Termination and Judicial Enforcement

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its

obligations or responsibilities under this compact, or the by-laws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative Dispute Resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the by-laws, or duly promulgated rules and any other grounds designated in commission by-laws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the

federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary, no monetary award is authorized by this compact because of the immunity granted to the State of Arkansas by the Constitution of the United States and the Constitution of the State of Arkansas.

Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the by-laws.

ARTICLE XII

Severability and Construction

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact, including the provisions of Article XI, Sections A, B, and C, shall be construed to waive the sovereign immunity of the State of Arkansas granted under the Constitution of the United States and the Constitution of the State of Arkansas.

ARTICLE XIII

Binding Effect of Compact and Other Laws

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and by-laws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

History. Acts 2005, No. 1530, § 1.

Cross References. Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Family Law, 28 U. Ark. Little Rock L. Rev. 357.

CHAPTER 30

CHILD ABUSE AND NEGLECT PREVENTION

SECTION.

9-30-101, 9-30-102. [Repealed.]

9-30-103. Definitions.

9-30-104. [Repealed.]

9-30-105. Powers and duties of the Department of Human Services.

SECTION.

9-30-106. Receipt of money.

9-30-107. Disbursement of funds.

9-30-108. Criteria for grants or loans.

9-30-109. Children's Trust Fund.

A.C.R.C. Notes. Acts 2013, No. 528, § 5, provided: "The State Child Abuse and Neglect Prevention Board, the Department of Health, and the Department of Human Services shall provide recommendations to the General Assembly on or before October 1, 2013, about whether to pursue one (1) or more memoranda of understanding with other state agencies to include home visiting outcome data in state longitudinal data systems."

Acts 2017, No. 897, § 1, provided: "Abolition of the Child Abuse and Neglect Prevention Board.

"(a) The State Child Abuse and Neglect Prevention Board is abolished, and its powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds are transferred to the Department of Human Services to be administered by the Division of Children and Family Services of the Department of Human Services by a type 3 transfer under § 25-2-

106.

"(b) For the purposes of this act, the Department of Human Services shall be considered a principal department established by Acts 1971, No. 38."

Effective Dates. Acts 1989, No. 353, § 3: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the State Child Abuse and Neglect Prevention Board is currently required by law to deposit federal grant money into the Children's Trust Fund and that these federal funds do not need to be accumulated in the Fund as are other State funds. Therefore, in order to permit the Board to more fully utilize the federal funds, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1989."

Acts 2013, No. 528, § 6: Mar. 28, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the home visiting networks provide important services to Arkansas’s most vulnerable citizens, our infants and toddlers; that the agencies administering home visiting programs need to ensure the accountability of these programs; and that these changes need to be made immediately so that planning and coordination among the agencies comply in a timely manner with the reporting requirements. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is

vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”
Acts 2017, No. 897, § 21: July 1, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that it would be prudent to abolish the State Child Abuse and Neglect Prevention Board and transfer the powers and duties of the State Child Abuse and Neglect Prevention Board to the Department of Human Services; that this act facilitates the timely transfer of the State Child Abuse and Neglect Prevention Board to the Department of Human Services; and that this act is necessary for alignment with the fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017.”

RESEARCH REFERENCES

ALR. Social worker malpractice. 58 A.L.R.4th 977.

Am. Jur. 42 Am. Jur. 2d, Infants, § 15 et seq.

47 Am. Jur. 2d, Juv. Cts., § 47 et seq.

C.J.S. 43 C.J.S., Infants, § 12 et seq.

9-30-101, 9-30-102. [Repealed.]

Publisher’s Notes. These sections, concerning title and purpose, were repealed by Acts 2017, No. 897, §§ 3, 4. The sections were derived from the following sources:

9-30-101. Acts 1987, No. 397, § 1.

9-30-102. Acts 1987, No. 397, § 2; 2003, No. 1224, § 1.

9-30-103. Definitions.

- As used in this chapter:
- (1) “Child” means a person under eighteen (18) years of age;
- (2)(A) “Child abuse” means any nonaccidental physical injury, mental injury, sexual abuse, or sexual exploitation inflicted by those legally responsible for the care and maintenance of the child, or an injury that is at variance with the history given.
- (B) “Child abuse” encompasses both acts and omissions;
- (3) “Local council” means an organization consisting of an employee of the Department of Human Services, an employee of the Department of Health, an employee of a public secondary or elementary school, an employee of the county sheriff’s office or a city police department, a citizen at large, and any other persons deemed necessary by the

Department of Human Services, including, but not limited to, representatives from other groups or entities involved with child abuse and neglect or family violence;

(4) “Neglect” means:

(A) Failure to provide, by those legally responsible for:

(i) The care and maintenance of the child and the proper or necessary support;

(ii) Education, as required by law; or

(iii) Medical, surgical, or any other care necessary for his or her well-being; or

(B)(i) Any maltreatment of the child.

(ii) The term includes both acts and omissions.

(iii) This chapter shall not be construed to mean a child is neglected or abused for the sole reason he or she is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment;

(5) “Parenting-from-prison program” means classes or services provided to incarcerated parents at any detention or correctional facility;

(6)(A) “Prevention program” means a system of direct provision of child abuse and neglect primary and secondary prevention services to a child or guardian and includes research programs related to prevention of child abuse and neglect.

(B)(i) “Primary prevention” means programs and services designed to promote the general welfare of children and families.

(ii) “Secondary prevention” means the identification of children who are in circumstances in which there is a high risk that abuse or neglect will occur and assistance is necessary and appropriate to prevent abuse or neglect from occurring; and

(7) “Program for the children of prisoners” means school or community-based services provided to:

(A) The children of individuals incarcerated in any detention or correctional facility; or

(B) The caregivers of children of individuals incarcerated in any detention or correctional facility.

History. Acts 1987, No. 397, § 3; 2003, No. 1224, § 1; 2017, No. 897, § 5.

Amendments. The 2017 amendment deleted former (1), and redesignated the remaining subdivisions accordingly; substituted “Child abuse” for “The term” in (2)(B); in (3), deleted “formed under rules

prescribed by the board” following “organization”, and substituted “Department of Human Services” for “board”; redesignated (4)(B) as (4)(B)(i)-(ii); and substituted “This chapter shall not” for “Nothing in this chapter shall” in the second sentence of (4)(B)(ii) [now (4)(B)(iii)].

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Neglect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

9-30-104. [Repealed.]

Publisher's Notes. This section, concerning the State Child Abuse and Neglect Prevention Board, was repealed by Acts 2017, No. 897, § 6. The section was derived from Acts 1987, No. 397, §§ 4, 5; 1997, No. 250, § 54; 2005, No. 166, § 1.

9-30-105. Powers and duties of the Department of Human Services.

(a) The Department of Human Services shall adopt rules necessary for the implementation of this chapter.

(b) Regarding the administration of the Children's Trust Fund, the department shall:

(1) Promulgate rules prescribing the procedure for establishing local councils;

(2) Provide for the coordination and exchange of information on the establishment and maintenance of local councils and prevention programs;

(3) Develop and publicize criteria for the distribution of Children's Trust Fund money under § 9-30-106;

(4) Monitor the expenditure of Children's Trust Fund money by persons, groups, and entities who receive Children's Trust Fund money from the department; and

(5) Provide statewide educational and public information seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect, encourage professional persons and groups to recognize and deal with problems of child abuse and neglect, make information about the problems of child abuse and neglect available to the public and organizations and agencies that deal with problems of child abuse and neglect, and encourage the development of community prevention programs.

(c) Regarding the administration of the One Percent to Prevent Fund, to the extent funding is appropriated and available, the department shall:

(1) Develop and implement parenting-from-prison programs with preference given to facilities where parenting-from-prison programs exist or where community-based services are available;

(2) Develop and implement a post-release parenting program for parents who have been recently released from a detention or correctional facility in communities that can establish a need for the services;

(3) Develop and implement a program for the children of prisoners in communities that can establish a need for the services;

(4) Develop and implement other services and programs as needed that prevent children of prisoners from becoming future prisoners;

(5) Provide training, quality assurance, and technical assistance for each of the services and programs funded under the One Percent to Prevent Fund;

(6) Provide for the evaluation by an independent source of all services and programs funded by the One Percent to Prevent Fund; and

(7) On or before October 1 of each year, provide an annual report to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs summarizing the evaluations of the One Percent to Prevent Fund.

(d) The department may enter into contracts with any person, group of persons, or legal entity to fulfill the requirements of this section.

History. Acts 1987, No. 397, §§ 5, 7; 2003, No. 1224, § 2; 2013, No. 528, § 1; 2017, No. 896, § 1; 2017, No. 897, § 7.

Amendments. The 2017 amendment by No. 896 repealed (a)(4).

The 2017 amendment by No. 897 substituted “the Department of Human Services” for “board” in the section heading;

rewrote (a); substituted “department” for “board” throughout the section; substituted “rules” for “regulations” in (b)(1); and deleted (e).

Cross References. Interim committees of the General Assembly as aids in the legislative process, § 10-3-203.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Ne-

glect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

9-30-106. Receipt of money.

(a)(1) The Department of Human Services shall be the sole entity authorized to receive money from the United States Government, other governments, persons, or any other entities for the Children’s Trust Fund and the One Percent to Prevent Fund.

(2) The moneys received for the Children’s Trust Fund and the One Percent to Prevent Fund are separate and shall be used only for the purposes provided in this chapter.

(b)(1) Regarding the Children’s Trust Fund, the department shall not accept money or other assistance from the United States Government or any other entity or person if the acceptance would obligate the State of Arkansas, except to the extent money is available in the Children’s Trust Fund subject to the expenditure limitations prescribed by this chapter for the Children’s Trust Fund.

(2) All money except money from the United States Government received in the manner described in this section shall be transmitted to the Treasurer of State for deposit into the Children’s Trust Fund.

(c) Regarding the One Percent to Prevent Fund, the department shall not accept money or other assistance from the United States Government or any other entity or person if the acceptance would obligate the State of Arkansas, except to the extent money is available in the One Percent to Prevent Fund.

History. Acts 1987, No. 397, § 8; 1989, No. 353, § 1; 2003, No. 1224, § 2; 2017, No. 897, § 8.

Amendments. The 2017 amendment substituted “Department of Human Ser-

vices” for “State Child Abuse and Neglect Prevention Board” in (a)(1); and substituted “department” for “board” in (b)(1) and (c).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Child Abuse and

Neglect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

9-30-107. Disbursement of funds.

(a) The Department of Human Services may disburse money appropriated from the Children’s Trust Fund exclusively to make grants or loans to any person, group of persons, or legal entity for the development or operation of a prevention program if at least all of the following conditions are met:

(1) The appropriate local council has reviewed and approved the program;

(2) The organization demonstrates an ability to match through money or in-kind services at least twenty-five percent (25%) of the amount of any Children’s Trust Fund money to be disbursed to it;

(3) The organization demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance; and

(4) Other conditions that the department may deem appropriate.

(b) Disbursement of Children’s Trust Fund money under subsection (a) of this section shall be kept at a minimum in furtherance of the primary purpose of the Children’s Trust Fund, which is to disburse money to encourage the direct provision of services to prevent child abuse and neglect.

(c)(1) Except as provided in subdivision (c)(2) of this section, the department may disburse money appropriated from the One Percent to Prevent Fund exclusively to make grants to any person, group of persons, or legal entity for the development, implementation, operation, or improvement of a parenting-from-prison program, a program for the children of prisoners, or a post-release parenting program as provided in § 9-30-105(c)(2).

(2) To make a grant under subdivision (c)(1) of this section, the following requirements must be met:

(A) The department or its designee reviews and approves the program;

(B) The person or entity applying for the grant demonstrates the academic background and evaluative experience necessary to provide program models and consultation on any of the programs under § 9-30-105(c); and

(C) Other conditions that the department may deem appropriate.

History. Acts 1987, No. 397, § 9; 2003, No. 1224, § 2; 2017, No. 897, § 9.

Amendments. The 2017 amendment substituted "Department of Human Services" for "State Child Abuse and Neglect Prevention Board" and "department" for "board" throughout the section; redesignated the former introductory language of (a)(1) to be part of the introductory language of (a); deleted "for the following

purposes" following "exclusively" in the introductory language of (a); redesignated former (a)(1)(A)-(D) as present (a)(1)-(4); deleted former (a)(2); deleted "under subdivisions (a)(1) and (2) of this section" following "disburse money" in (b); redesignated former (c)(1)(A) as present (c)(1) and redesignated the remaining subdivisions accordingly; deleted former (c)(2); and made stylistic changes.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Election Law, Child Abuse and

Neglect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

9-30-108. Criteria for grants or loans.

Regarding the Children's Trust Fund, in making grants or loans to a local council, the Department of Human Services shall consider the degree to which the local council meets the following criteria:

(1)(A) Has as its primary purpose the development and facilitation of a community prevention program in a specific geographical area.

(B) The prevention programs shall utilize trained volunteers and existing community resources wherever practicable;

(2) Does not provide direct services except on a demonstration project basis, or as a facilitator of interagency projects; and

(3) Demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance.

History. Acts 1987, No. 397, § 10; 2003, No. 1224, § 2; 2017, No. 897, § 10.

Amendments. The 2017 amendment substituted "Department of Human Ser-

vices" for "State Child Abuse and Neglect Prevention Board" in the introductory language; and redesignated (1) as (1)(A) and (1)(B).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Ne-

glect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

9-30-109. Children's Trust Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special trust fund to be known as the "Children's Trust Fund".

(b) All county clerks in this state shall charge a fee of ten dollars (\$10.00) in addition to all other fees prescribed by law for each marriage license issued, and the clerks shall transmit the ten-dollar fee to the Treasurer of State who shall deposit it into the trust fund as special revenues.

(c)(1) Until the balance of the trust fund reaches ten million dollars (\$10,000,000), not more than eighty percent (80%) of the money credited to the trust fund during any fiscal year shall be disbursed during that fiscal year.

(2) When the balance in the trust fund reaches ten million dollars (\$10,000,000), disbursements from the trust fund shall be limited to the amount in excess of ten million dollars (\$10,000,000).

(d) The Treasurer of State shall credit to the trust fund all moneys earned on the trust fund balance.

(e) No more than twenty percent (20%) of the revenues derived from the marriage license fees during any fiscal year shall be used to cover the administrative costs of the trust fund.

(f) The twenty-percent limitation does not apply to capital expenditures.

History. Acts 1987, No. 397, § 6; 1991, No. 694, § 1; 1993, No. 174, § 1; 2003, No. 1224, § 2; 2017, No. 897, § 11.

Amendments. The 2017 amendment deleted “and the operation of the State Child Abuse and Neglect Prevention Board” at the end of (e).

Cross References. Children’s Trust Fund, § 19-5-949.

County offices defined, § 14-14-603.

Distribution of powers, § 14-14-502.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Child Abuse and Ne-

glect Prevention, 26 U. Ark. Little Rock L. Rev. 418.

CHAPTER 31
YOUTH SERVICES

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [RESERVED.]
- 2. ADEPT PROGRAM.
- 3. COMMUNITY WORK, RECREATION, AND YOUTH OPPORTUNITIES ACT. [REPEALED.]
- 4. ARKANSAS YOUTH MEDIATION PROGRAM ACT.
- 5. SCIENCE OF READING.

SUBCHAPTER 1 — GENERAL PROVISIONS
[Reserved.]

SUBCHAPTER 2 — ADEPT PROGRAM

SECTION.

- 9-31-201. Definitions.
- 9-31-202. Objectives and duties.

A.C.R.C. Notes. The term “ADEPT” refers to the Assessment, Diagnosis, Evaluation, Placement, and Treatment Program of the Department of Human Services.

As enacted, Acts 1994 (2nd Ex. Sess.), No. 23, § 2 began: “The department shall award a contract for the establishment of an ADEPT program.”

Effective Dates. Acts 1994 (2nd Ex. Sess.), No. 23, § 6: Aug. 23, 1994. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas meeting in the Second Extraordinary Session of 1994 that there is a serious shortage of treatment programs for non-adjudicated and adjudicated juveniles and their families; that additional treatment programs are needed immediately in order to curb the unprecedented growth of juvenile crime. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall

be in full force and effect from and after its passage and approval.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

9-31-201. Definitions.

As used in this subchapter:

(1) “ADEPT” means a program that provides assessment, diagnosis, evaluation, placement, and treatment services to nonadjudicated and adjudicated youths and their families using a multidiscipline approach and working in coordination with existing juvenile treatment programs; and

(2) “Department” means the Department of Human Services.

History. Acts 1994 (2nd Ex. Sess.), No. 23, § 1; 2019, No. 910, § 5147.

Amendments. The 2019 amendment repealed (3).

9-31-202. Objectives and duties.

The ADEPT program shall:

(1)(A) Provide services to adjudicated and nonadjudicated juveniles on a nonresidential and a residential basis.

(B) The target population to be served by this type of program shall be defined by the Secretary of the Department of Human Services;

(2) Establish three (3) initial service delivery sites;

(3) Place a priority on treating youths and their families on a nonresidential basis;

(4) Maintain a record of all referrals;

- (5) Provide the results of assessments, diagnoses, evaluations, and treatment and placement recommendations for all court-referred youths to the courts that referred the youths to the ADEPT program;
- (6) Train local providers to conduct initial assessments for youths and their families in the program;
- (7) Provide diagnoses, evaluations, and treatment and placement recommendations by using a team of M.D. and Ph.D. adolescent specialists, masters of social work, and other treatment professionals;
- (8) Maintain a case file on each youth receiving ADEPT services;
- (9) Develop a case plan for each youth who enters the ADEPT treatment system;
- (10) Screen clients with a high risk of alcohol use for recent alcohol use and research the use of alcohol and its relation to attention deficit disorders and other diseases that adversely affect the behavior patterns of youths;
- (11) Place a priority on using the least costly treatment methods and seek funding support from sources, including, but not limited to, Medicaid;
- (12) Submit monthly reports to the secretary that include intake, closure, and follow-up data;
- (13) Provide quarterly reports to the secretary and to the Bureau of Legislative Research; and
- (14) Submit an annual report to the secretary and to the bureau summarizing the monthly reports and additional information, including, but not limited to, the types of problems identified, treatment services provided, and any identifiable service future needs.

<p>History. Acts 1994 (2nd Ex. Sess.), No. 23, § 2; 2019, No. 910, §§ 5148, 5149.</p> <p>Amendments. The 2019 amendment substituted “Secretary of the Department</p>	<p>of Human Services” for “Director of the Department of Human Services” in (1)(B); and substituted “secretary” for “director” in (12)-(14).</p>
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SUBCHAPTER 3 — COMMUNITY WORK, RECREATION, AND YOUTH OPPORTUNITIES ACT

[Repealed.]

SECTION.
9-31-301 — 9-31-305. [Repealed.]

9-31-301 — 9-31-305. [Repealed.]

<p>Publisher’s Notes. Former §§ 9-31-301 — 9-31-305, concerning the Community Work, Recreation, and Youth Opportunities Commission, were repealed by Acts 1999, No. 1133, § 2. The sections were derived from the following sources:</p>	<p>9-31-301. Acts 1995, No. 1278, § 1. 9-31-302. Acts 1995, No. 1278, § 2. 9-31-303. Acts 1995, No. 1278, § 3. 9-31-304. Acts 1995, No. 1278, § 3; 1997, No. 250, § 55; 1997, No. 1354, § 12. 9-31-305. Acts 1995, No. 1278, § 4.</p>
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SUBCHAPTER 4 — ARKANSAS YOUTH MEDIATION PROGRAM ACT

SECTION.

9-31-401. Title.

9-31-402. Legislative purpose.

9-31-403. Definitions.

9-31-404. Powers and responsibilities of
the Arkansas Youth Me-
diation Program.

SECTION.

9-31-405. Program goals.

Effective Dates. Acts 1999, No. 628, § 9: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that in other states mediation programs have been successful in helping youth and people in their homes, schools, and communities to resolve conflicts cooperatively, productively, and non-violently, that a program of youth mediation training is intended to benefit children, families, professionals, and courts throughout the

State of Arkansas by preventing harmful conflicts from rising to confrontation and violence, and that the most effective time to create and implement new programs in state government is at the beginning of a new state fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

9-31-401. Title.

This subchapter shall be known and may be cited as the "Arkansas Youth Mediation Program Act of 1999".

History. Acts 1999, No. 628, § 1.

9-31-402. Legislative purpose.

The General Assembly recognizes:

(1) That the youth of Arkansas are its most important natural resource and they are increasingly at risk due to conflict in their homes, schools, and communities;

(2) That mediation programs can help the youth of Arkansas and people in their homes, schools, and communities to resolve conflicts cooperatively, productively, and nonviolently and when possible prevent harmful conflicts from rising to confrontation and violence; and

(3) Therefore this subchapter is intended to benefit children, families, professionals, and courts throughout the State of Arkansas by establishing the Arkansas Youth Mediation Program to be housed at the University of Arkansas at Little Rock William H. Bowen School of Law and the University of Arkansas at Fayetteville School of Law to provide mediation services and training for:

(A) Children in schools;

(B) Youth who have committed certain delinquent acts;

(C) Children and families in need of services; and

(D) Children and families when there are allegations or findings of child abuse or neglect.

History. Acts 1999, No. 628, § 2.

9-31-403. Definitions.

As used in this subchapter:

(1) “Mediation” means a process in which a neutral person or persons help disputants try to resolve a dispute in whole or in part by reaching an agreement without the mediator or mediators imposing the agreement; and

(2) “Program” means the Arkansas Youth Mediation Program at the University of Arkansas at Little Rock William H. Bowen School of Law and the University of Arkansas at Fayetteville School of Law.

History. Acts 1999, No. 628, § 3.

9-31-404. Powers and responsibilities of the Arkansas Youth Mediation Program.

(a)(1) There is created a program that shall be called the “Arkansas Youth Mediation Program”.

(2) In the event funds are appropriated for this purpose, it shall be housed at and operated by the University of Arkansas at Little Rock William H. Bowen School of Law and the University of Arkansas at Fayetteville School of Law.

(b) The program shall have the authority and responsibility to:

(1) Operate pilot projects offering mediation services for disputes in schools involving youth, juvenile delinquency cases, family-in-need-of-services cases, and dependency-neglect cases;

(2) Provide training and technical assistance for elementary and secondary schools to:

(A) Operate mediation programs in these schools for disputes involving children; and

(B) Incorporate conflict resolution education into the curriculum;

(3) Provide training and technical assistance for circuit courts to mediate juvenile delinquency and family-in-need-of-services cases as the courts deem appropriate;

(4) Provide training and technical assistance for circuit courts to mediate dependency-neglect cases as the courts deem appropriate;

(5) Offer law school courses and continuing education programs for lawyers and other professionals throughout Arkansas;

(6) Hire personnel and expend funds as necessary and appropriate to carry out the program’s goals;

(7) Apply for and accept gifts or grants from any public or private source for use in maintaining and improving the operation of the program; and

- (8) Take other appropriate actions to carry out the program's goals.

History. Acts 1999, No. 628, § 4.

9-31-405. Program goals.

The Arkansas Youth Mediation Program's goals are to:

- (1) Reduce economic, psychological, and social costs to individuals and public and private institutions arising from disputes involving youth;
- (2) Reduce court dockets and delays;
- (3) Increase the ability of youth to resolve conflicts cooperatively, productively, and nonviolently;
- (4) Reduce antisocial behavior by children, parents, and other relatives;
- (5) Increase the ability of elementary and secondary schools to concentrate their efforts on education by decreasing distractions due to conflicts in school;
- (6) Encourage youth offenders to understand the consequences of their actions and take responsibility for those actions by providing suitable restitution to victims of their offense or other rehabilitative dispositions, or both;
- (7) Provide victims of juvenile crime an opportunity to constructively confront offenders to explain the impact of the offense and develop suitable restitution plans or other rehabilitative dispositions;
- (8) Expedite the safe and permanent placement of children removed from their homes due to allegations or findings of being dependent-neglected by improving the operation of the Department of Human Services in developing and implementing appropriate case plans in cooperation with affected family members and other interested individuals and agencies;
- (9) Train lawyers and law students in techniques for satisfying a client's interests through negotiation and mediation and reducing unnecessary adversarial behavior and expense in litigation throughout Arkansas; and
- (10) Assist public and private institutions in Arkansas to incorporate mediation programs into their institutions by providing training and technical assistance.

History. Acts 1999, No. 628, § 5.

SUBCHAPTER 5 — SCIENCE OF READING

SECTION.

9-31-501. Dyslexia screening — Intervention services.

SECTION.

9-31-502. Requirements for educators — Science of reading.

A.C.R.C. Notes. Acts 2019, No. 1089, § 1, provided: “Legislative findings. The General Assembly finds that:

“(1) The Division of Youth Services is part of the organizational structure of the Department of Human Services and offers a number of programs for juveniles;

“(2) Among the programs and services offered by the division is an education system, and one (1) of the goals of the education system of the division is to ensure significant academic progress for each juvenile who is served by the division;

“(3) The mission of the education system of the division is to provide, in a manner consistent with the administration of public education in this state and throughout the country, a system of high quality education programs that address the needs of juveniles who come in contact with the juvenile justice system;

“(4) To accomplish the mission of the division, the division:

“(A) Identifies and serves each juvenile with a disability in the division;

“(B) Improves the individual academic achievement of each juvenile in the education system of the division;

“(C) Provides an opportunity for progress toward state and local graduation requirements for each high-school-age juvenile in the education system of the division; and

“(D) Provides an opportunity for post-secondary education preparation for each juvenile who enters with or achieves graduate status while in the education system of the division;

“(5) The goal of the education system of the division is to coordinate with and not match the public school system in this state, and by offering courses in the core subject areas that meet state standards and graduation requirements, the division offers a consistent opportunity for all juveniles who are involved with the division to make adequate progress towards graduation; and

“(6) Reading proficiency is the foundation for achieving the goal of the education system of the division and any other education system in this state.”

9-31-501. Dyslexia screening — Intervention services.

(a) Within thirty (30) calendar days, excluding holidays, of being committed to the Division of Youth Services, a juvenile shall have his or her reading proficiency level assessed and a dyslexia screening shall be delivered with fidelity, as defined in § 6-41-602.

(b) If a reading assessment or dyslexia screening under subsection (a) of this section indicates that an individual is reading below the level of proficiency required to be a high-functioning reader, the individual shall be provided:

(1) Evidence-based reading intervention based on the science of reading; and

(2) Dyslexia intervention that is evidence-based according to the Division of Elementary and Secondary Education’s compilation of appropriate intervention programs under § 6-17-429.

(c) An intervention plan provided for an individual who is reading below the level of proficiency required to be a high-functioning reader under subsection (b) of this section shall be administered with fidelity, as defined in § 6-41-602.

(d) Juveniles currently committed to the Division of Youth Services shall be:

(1) Provided with information that explains what dyslexia is in common and easily understandable language;

(2) Offered and encouraged to submit to dyslexia screening; and

(3) Provided with dyslexia intervention with fidelity, as defined in § 6-41-602, in the same manner as required for newly committed juveniles under subsection (b) of this section.

History. Acts 2019, No. 1089, § 2.

A.C.R.C. Notes. Acts 2019, No. 1089, § 3, provided: "Rulemaking authority. The Division of Youth Services:

"(1)(A) Shall promulgate rules for implementing this subchapter.

"(B) When adopting the initial rules to implement this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

"(i) On or before January 1, 2020; or

"(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon

as practicable after approval under § 10-3-309.

"(C) The division shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020; and

"(2) May consult with the Department of Education and make use of Department of Education resources in order to implement this subchapter."

9-31-502. Requirements for educators — Science of reading.

(a) An individual who teaches nonreaders and juveniles reading at a sixth-grade level or below in the education system of the Division of Youth Services shall:

(1) Have and demonstrate proficient knowledge and skills to teach reading consistent with the best practices of scientific reading instruction as required under the Right to Read Act, § 6-17-429; and

(2) Administer reading instruction with fidelity, as defined in § 6-41-602.

(b) An individual who teaches juveniles reading at a seventh-grade level or above in the education system of the division shall:

(1) Have and demonstrate awareness of the best practices of scientific reading instruction as required under the Right to Read Act, § 6-17-429; and

(2) Administer reading instruction with fidelity, as defined in § 6-41-602.

History. Acts 2019, No. 1089, § 2.

A.C.R.C. Notes. Acts 2019, No. 1089, § 3, provided: "Rulemaking authority. The Division of Youth Services:

"(1)(A) Shall promulgate rules for implementing this subchapter.

"(B) When adopting the initial rules to implement this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

"(i) On or before January 1, 2020; or

"(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon

as practicable after approval under § 10-3-309.

"(C) The division shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020; and

"(2) May consult with the Department of Education and make use of Department of Education resources in order to implement this subchapter."

CHAPTER 32
CHILD WELFARE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS CHILD WELFARE PUBLIC ACCOUNTABILITY ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

9-32-101. Collaboration of state agencies
to form and implement
statewide child abduction
response teams.

**9-32-101. Collaboration of state agencies to form and implement
statewide child abduction response teams.**

(a)(1) The following agencies shall collaborate in a multiagency effort to rescue abducted or endangered children, implement one (1) or more statewide child abduction response teams, and allocate the respective resources of each agency to cases involving missing or endangered children:

- (A) Office of the Attorney General;
- (B) Division of Arkansas State Police;
- (C) Criminal Justice Institute;
- (D) Arkansas State Game and Fish Commission;
- (E) Arkansas Sheriffs' Association;
- (F) Division of Emergency Management;
- (G) Arkansas Association of Chiefs of Police;
- (H) Division of Community Correction; and
- (I) Office of the Prosecutor Coordinator.

(2) Each agency listed under subdivision (a)(1) of this section shall:

(A) Execute a memorandum of understanding concerning the guidelines for the implementation of one (1) or more statewide child abduction response teams; and

(B) Respectively coordinate the available resources of the agency to implement one (1) or more statewide child abduction response teams and adhere to the executed memorandum of understanding.

(b) The Division of Arkansas State Police shall:

(1) Assemble one (1) or more statewide child abduction response teams; and

(2) Ensure that the agencies listed under subsection (a) of this section work in partnership to:

- (A) Respond to child abduction incidents; and
- (B) Provide preventative measures for child abduction.

(c) The Criminal Justice Institute shall coordinate the certification and recertification of each statewide child abduction response team.

History. Acts 2019, No. 913, § 1.

SUBCHAPTER 2 — ARKANSAS CHILD WELFARE PUBLIC ACCOUNTABILITY ACT

SECTION.

- 9-32-201. Short title.
- 9-32-202. Legislative findings.
- 9-32-203. Quarterly performance reports.
- 9-32-204. Annual performance reports —
Arkansas Child Welfare
Report Card.

SECTION.

- 9-32-205. Annual performance audits.
- 9-32-206. Provision of information and
assistance.
- 9-32-207. Annual report to General As-
sembly.

Effective Dates. Acts 1995, No. 1222, § 11: Apr. 11, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that the child welfare program is vitally important to this State; that oversight by the General Assembly is imperative; that this act establishes the oversight mechanism; and that this act should go into effect immediately in order to implement the child welfare program oversight as soon as possible. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

9-32-201. Short title.

This subchapter shall be known as and may be cited as the “Arkansas Child Welfare Public Accountability Act”.

History. Acts 1995, No. 1222, § 1.

9-32-202. Legislative findings.

To enhance the public's access to child welfare program performance indicators, to raise the public's awareness of the child welfare program's client outcomes, to enable the General Assembly to monitor and assess the performance of the Division of Children and Family Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Youth Services, and to specifically monitor the compliance of the Division of Children and Family Services with court-ordered settlement agreements and compliance with state laws and rules and federal regulations, the General Assembly finds that special and extraordinary provisions for legislative oversight of the child welfare system should be established.

History. Acts 1995, No. 1222, § 2; 2001, No. 1727, § 1; 2013, No. 980, § 1; 2017, No. 913, § 29; 2019, No. 315, § 732.

Amendments. The 2017 amendment substituted "the Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" and made a stylistic change.

The 2019 amendment inserted "laws and rules".

Cross References. Provision of information and assistance by the Crimes Against Children Division of the Department of Arkansas State Police, § 12-8-508.

9-32-203. Quarterly performance reports.

(a)(1) The Division of Youth Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Children and Family Services are hereby directed to issue to the Senate Interim Committee on Children and Youth a quarterly report on the performance of the child welfare system.

(2) These quarterly reports will be known as the "Division of Youth Services of the Department of Human Services Quarterly Performance Report", the "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services Quarterly Performance Report", and the "Division of Children and Family Services of the Department of Human Services Quarterly Performance Report" and shall be transmitted to the Senate Interim Committee on Children and Youth no later than sixty (60) calendar days after the end of each calendar quarter.

(b) The Division of Youth Services of the Department of Human Services Quarterly Performance Report, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services Quarterly Performance Report, and the Division of Children and Family Services of the Department of Human Services Quarterly Performance Report shall include without limitation:

- (1) Client outcome information;
- (2) Case status information;
- (3) Compliance information;
- (4) Management indicators; and

(5) Other data agreed to by the Senate Interim Committee on Children and Youth, the Division of Aging, Adult, and Behavioral

Health Services, the Division of Children and Family Services, and the Division of Youth Services.

(c) The Division of Aging, Adult, and Behavioral Health Services shall report information by mental health catchment areas with actual totals.

(d)(1) The Division of Children and Family Services shall report on the number of children in foster care who experienced two (2) or more placements in care and the number of children in foster care who have run away at the end of each quarter.

(2) The data shall include, but not be limited to, the number of placements, the race and age of the children experiencing multiple moves, and runaway status.

(3) This data shall be reported by regional areas in the annual report.

(e)(1) The Division of Children and Family Services shall report on the fatality or near fatality of a child that is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq.

(2) The data on a reported fatality or near fatality shall include the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death or incident;
- (C) Allegations or preliminary cause of death or incident;
- (D) County and type of placement of the child at the time of the incident;
- (E) Generic relationship of the alleged offender to the child;
- (F) Agency conducting the investigation;
- (G) Legal action by the Department of Human Services; and
- (H) Services offered or provided by the department presently and in the past.

(3) The data of a fatality shall also include the name of the child.

(f)(1) The department shall report Child Abuse Hotline reports received on a child in the custody of the department, and the department may identify if the child maltreatment act or omission occurred before or after the child was placed in the custody of the department.

(2) The data on a report of maltreatment on a foster child shall include the:

- (A) Age, race, and gender of the child;
- (B) Allegations of maltreatment;
- (C) County and type of placement of the child at the time of the incident;
- (D) Generic relationship of the alleged offender to the child; and
- (E) Action taken by the department.

(g)(1) The department shall report when a child dies if that child was in an out-of-home placement as defined under § 9-27-303.

(2) The data on the death of a child in an out-of-home placement shall include the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death;
- (C) Preliminary cause of death;

(D) County and type of placement of the child at the time of the incident; and

(E) Action by the department.

(h) The department shall report any noncase-specific recommendations of the department's internal Child Death Review Committee.

History. Acts 1995, No. 1222, § 3; 1997, No. 312, § 4; 2001, No. 1727, § 2; 2003, No. 178, § 1; 2003, No. 1809, § 16; 2009, No. 674, § 2; 2013, No. 1181, § 2; 2017, No. 913, § 30.

A.C.R.C. Notes. As enacted, subdivision (a)(2) also provided: "The first quarterly report is due October 30, 1995."

As enacted, this section contained a subsection (c), which provided: "(c) Prior to July 1, 1995, the Division of Youth Services and the Division of Children and Family Services shall submit its recommended format and content for the report to the Joint Committee on Children and Youth for its review and comment."

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and

Behavioral Health Services" for "Division of Behavioral Health Services" in (a)(1) and the introductory language of (b); substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (a)(2), (b)(5), and (c); inserted "of the Department of Human Services" following "Youth Services" in (a)(2); substituted "include without limitation" for "contain, but not be limited to" in the introductory language of (b); and added "of the Department of Human Services" at the end of (b)(5).

Cross References. Provision of information and assistance by the Crimes Against Children Division of the Division of Arkansas State Police, § 12-8-508.

9-32-204. Annual performance reports — Arkansas Child Welfare Report Card.

(a)(1)(A) The Division of Youth Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Children and Family Services shall issue an annual report on the performance of the child welfare system on a county-by-county basis.

(B) The Division of Aging, Adult, and Behavioral Health Services will report information by mental health catchment areas with state totals.

(2) This annual report will be known as the "Arkansas Child Welfare Report Card".

(b) The Arkansas Child Welfare Report Card shall contain, but not be limited to, for each county and the state as a whole:

(1) Client outcome information;

(2) Case status information;

(3) Compliance information;

(4) Management indicators; and

(5) Other data specified by the Senate Interim Committee on Children and Youth.

(c) The Arkansas Child Welfare Report Card shall be published and transmitted to the Senate Interim Committee on Children and Youth no later than December 1 of each year, and it must be published in a format that can be easily understood by the general public.

(d)(1) The Division of Children and Family Services shall report on the fatality or near fatality of a child that is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq.

(2) The data on a reported fatality or near fatality shall include the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death or incident;
- (C) Allegations or preliminary cause of death or incident;
- (D) County and type of placement of the child at the time of the incident;
- (E) Generic relationship of the alleged offender to the child;
- (F) Agency conducting the investigation;
- (G) Legal action by the Department of Human Services; and
- (H) Services offered or provided by the department presently and in the past.

(3) The data of a fatality shall also include the name of the child.

(e)(1) The department shall report hotline reports received on a child in the custody of the department, and the department may identify if the child maltreatment act or omission occurred before or after the child was placed in the custody of the department.

(2) The data on a report of maltreatment on a foster child shall include the:

- (A) Age, race, and gender of the child;
- (B) Allegations of maltreatment;
- (C) County and type of placement of the child at the time of the incident;
- (D) Generic relationship of the alleged offender to the child; and
- (E) Action taken by the department.

(f)(1) The department shall report when a child dies if that child was in an out-of-home placement as defined under § 9-27-303.

(2) The data on the death of a child in an out-of-home placement shall include the:

- (A) Age, race, and gender of the child;
- (B) Date of the child's death;
- (C) Preliminary cause of death;
- (D) County and type of placement of the child at the time of the incident; and
- (E) Action by the department.

(g) The department shall place any noncase-specific recommendations of the department's internal Child Death Review Committee on the department's web page.

History. Acts 1995, No. 1222, § 4; 1997, No. 312, § 5; 2001, No. 1727, § 3; 2009, No. 674, § 3; 2013, No. 1181, § 3; 2017, No. 913, § 31.

A.C.R.C. Notes. As enacted, subdivision (a)(1) began: "Beginning December 1, 1995".

As enacted, this section also provided: "Prior to July 1, 1995, the Division of Youth Services and the Division of Children and Family Services shall submit its recommended format and content for the

report to the Joint Committee on Children and Youth for its review and comment."

Amendments. The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services" for "Division of Behavioral Health Services" in (a)(1)(A) and "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (a)(1)(B).

Cross References. Provision of information and assistance by the Crimes

Against Children Division of the Division
of Arkansas State Police, § 12-8-508.

9-32-205. Annual performance audits.

(a) The Senate Interim Committee on Children and Youth shall conduct annual performance audits of the Division of Youth Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Children and Family Services.

(b) To establish performance auditing standards, the Senate Interim Committee on Children and Youth shall use for guidance the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (revised), published by the United States Government Accountability Office.

(c) The performance audits shall include without limitation a complete assessment of the compliance of the Division of Youth Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Children and Family Services with state laws and rules and federal regulations and with the terms and conditions of the court-ordered settlement agreement.

(d) To conduct the performance audit, the Senate Interim Committee on Children and Youth may utilize surveys, client interviews, and other research methodology that it deems necessary.

History. Acts 1995, No. 1222, § 5; 1997, No. 312, § 6; 2001, No. 1727, § 4; 2013, No. 980, §§ 2, 3; 2017, No. 913, §§ 32, 33; 2019, No. 315, § 733.

A.C.R.C. Notes. As enacted, this section contained two additional subsections, which provided: “(e) The Joint Committee on Children and Youth shall commence preparations for the performance audits immediately.

“(f) The Joint Committee on Children and Youth shall review the performance audit procedures, methodology and design no later than July 1, 1995.”

Amendments. The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in (a) and (c); and substituted “include without limitation” for “contain, but not be limited to” in (c).

The 2019 amendment inserted “laws and rules” in (c).

Cross References. Provision of information and assistance by the Crimes Against Children Division of the Division of Arkansas State Police, § 12-8-508.

9-32-206. Provision of information and assistance.

(a) The Division of Youth Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Children and Family Services shall make available to the Senate Interim Committee on Children and Youth a list of all reports the unit submits to the Secretary of the Department of Human Services.

(b) Under the direction of the secretary, the Division of Youth Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Children and Family Services shall work cooperatively with and provide any necessary assistance to the Senate Interim Committee on Children and Youth.

(c) Notwithstanding any agency rules to the contrary, the Division of Youth Services, the Division of Aging, Adult, and Behavioral Health Services, and the Division of Children and Family Services shall furnish information to members of the General Assembly, legislative staff, or legislative committees immediately upon request.

History. Acts 1995, No. 1222, § 6; 1997, No. 312, § 7; 2001, No. 1727, § 5; 2013, No. 980, § 4; 2017, No. 913, § 34; 2019, No. 910, § 5150.

Amendments. The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in (a); substituted “Division of Aging, Adult, and Behavioral Health Services of the Depart-

ment of Human Services” for “Division of Behavioral Health Services” in (b) and (c); and inserted “of the Department of Human Services” following “Division of Youth Services” in (b) and (c).

The 2019 amendment substituted “Secretary of the Department of Human Services” for “Director of the Department of Human Services” in (a); and substituted “secretary” for “director” in (b).

9-32-207. Annual report to General Assembly.

The Senate Interim Committee on Children and Youth shall report annually to the General Assembly its findings and recommendations regarding the child welfare system.

History. Acts 1995, No. 1222, § 7; 1997, No. 312, § 8.

CHAPTER 33 YOUTH VIOLENCE

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. COMMON GROUND PROGRAM. [REPEALED.]
3. AFTER-SCHOOL ENRICHMENT PROGRAM. [REPEALED.]

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

SUBCHAPTER 2 — COMMON GROUND PROGRAM

[Repealed.]

SECTION.

9-33-201 — 9-33-206. [Repealed.]

9-33-201 — 9-33-206. [Repealed.]

Publisher’s Notes. This subchapter was repealed by Acts 2013, No. 1152, § 9. The subchapter was derived from the following sources:

- 9-33-201. Acts 1997, No. 745, § 1.
- 9-33-202. Acts 1997, No. 745, § 2.

- 9-33-203. Acts 1997, No. 745, § 3.
- 9-33-204. Acts 1997, No. 745, § 4; 1999, No. 1513, § 5.
- 9-33-205. Acts 1997, No. 745, § 5; 2001, No. 1553, § 21; 2013, No. 1107, § 11.
- 9-33-206. Acts 1997, No. 745, § 6.

SUBCHAPTER 3 — AFTER-SCHOOL ENRICHMENT PROGRAM

[Repealed.]

SECTION.
9-33-301 — 9-33-304. [Repealed.]

9-33-301 — 9-33-304. [Repealed.]

Publisher’s Notes. This subchapter was repealed by Acts 2013, No. 1152, § 10. The subchapter was derived from the following sources:

9-33-301. Acts 1999, No. 1513, § 1.

9-33-302. Acts 1999, No. 1513, § 2.

9-33-303. Acts 1999, No. 1513, § 3.

9-33-304. Acts 1999, No. 1513, § 4; 2007, No. 827, § 125.

CHAPTER 34

VOLUNTARY PLACEMENT OF A CHILD

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]

2. VOLUNTARY DELIVERY OF A CHILD.

Publisher’s Notes. Acts 2001, No. 236, was entitled the Safe Haven Act.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

SUBCHAPTER 2 — VOLUNTARY DELIVERY OF A CHILD

SECTION.

9-34-201. Definitions.

9-34-202. Delivery to medical provider, law enforcement agency, or fire department.

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9-34-203. Care of the child.

9-34-204. Missing Persons Information Clearinghouse.

Cross References. Endangering the welfare of a minor in the first degree, § 5-27-205.

Effective Dates. Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General As-

sembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.” The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

9-34-201. Definitions.

For purposes of this chapter:

(1) “Fire department” means any organization that is staffed twenty-four (24) hours a day and established for the prevention or extinguishment of fires, including, but not limited to, fire departments organized under municipal or county ordinances, improvement districts, membership fee-based private fire departments, and volunteer fire departments;

(2) “Law enforcement agency” means any police force or organization whose primary responsibility as established by law or ordinance is the enforcement of the criminal, traffic, or highway laws of this state as defined in § 12-9-301 and that is staffed twenty-four (24) hours a day; and

(3) “Medical provider” means any emergency department of a hospital licensed under § 20-9-214.

History. Acts 2001, No. 236, § 1; 2019, No. 185, § 2. added the definition for “Fire department”.

Amendments. The 2019 amendment

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

CASE NOTES

Cited: Burnette v. State, 354 Ark. 584, 127 S.W.3d 479 (2003).

9-34-202. Delivery to medical provider, law enforcement agency, or fire department.

(a) Any medical provider, law enforcement agency, or fire department shall take possession of a child who is thirty (30) days old or younger without a court order if the parent of the child, without expressing an intent to return for the child, leaves the child:

(1) With or voluntarily delivers the child to the medical provider, law enforcement agency, or fire department; or

(2) In a newborn safety device that is:

(A) Voluntarily installed by the medical provider, law enforcement agency, or fire department;

(B) Physically located inside a hospital, law enforcement agency, or fire department that is staffed twenty-four (24) hours a day by a medical services provider; and

(C) Located in an area that is conspicuous and visible to the employees of the hospital, law enforcement agency, or fire department.

(b)(1) A medical provider, law enforcement agency, or fire department that takes possession of a child under subsection (a) of this section

shall perform any act necessary to protect the physical health and safety of the child.

(2) A medical provider, law enforcement agency, or fire department shall:

(A) Keep the identity of a parent who relinquishes a child under this section confidential; and

(B) Not release or otherwise make the identity of the parent available except to a:

(i) Law enforcement agency investigating abuse or neglect of the child that was committed before the child was delivered to the medical provider or law enforcement agency; or

(ii) Prosecuting attorney pursuing charges against a parent for abuse or neglect of the child that was committed before the child was delivered to the medical provider, law enforcement agency, or fire department.

(c) A medical provider, law enforcement agency, or fire department shall not be criminally or civilly liable for any good faith acts or omissions performed under this section.

(d) A medical provider, law enforcement agency, or fire department that voluntarily installs a newborn safety device shall:

(1) Be responsible for the cost of the installation; and

(2) Install an adequate dual alarm system connected to the physical location of the newborn safety device that is:

(A) Tested at least one (1) time per week to ensure the alarm system is in working order; and

(B) Visually checked at least two (2) times per day to ensure the alarm system is in working order.

History. Acts 2001, No. 236, § 1; 2013, No. 1004, § 1; 2019, No. 185, § 3.

Amendments. The 2019 amendment rewrote the section.

CASE NOTES

Cited: Burnette v. State, 354 Ark. 584, 127 S.W.3d 479 (2003).

9-34-203. Care of the child.

(a) Upon delivery of the child to a medical provider, law enforcement agency, or fire department, the law enforcement officer, an appropriate employee of the fire department, or an appropriate employee of the hospital shall take the child into protective custody for seventy-two (72) hours under the Child Maltreatment Act, § 12-18-101 et seq.

(b) The law enforcement officer, employee of the fire department, or employee of the hospital shall immediately notify the Division of Children and Family Services, which shall initiate a dependency-neglect petition under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

History. Acts 2001, No. 236, § 1; 2009, No. 758, § 18; 2019, No. 185, § 4.

Amendments. The 2019 amendment, in (a), substituted “medical provider, law enforcement agency, or fire department” for “law enforcement agency or a medical provider”, and substituted “an appropri-

ate employee of the fire department, or an appropriate employee of the hospital” for “or an appropriate hospital employee”; substituted “employee of the fire department, or employee of the hospital” for “or hospital employee” in (b); and made a stylistic change.

9-34-204. Missing Persons Information Clearinghouse.

The Division of Children and Family Services shall utilize the Missing Persons Information Clearinghouse and any other national and state resources to determine whether the child is a missing child.

History. Acts 2001, No. 236, § 1.

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